

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE WESTERN DISTRICT OF PENNSYLVANIA

3           ANTHONY DEFRANCO,                                 :  
                                  Plaintiff                                 :  
4   :  
                  v.   :       C.A. No. 04-230 Erie  
5   :  
6           WILLIAM WOLFE, et al.,                                 :  
                                  Defendants                                 :

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10                   Hearing in the above-captioned matter held  
11                   on Friday, December 17, 2005, commencing at  
12                   at 10:50 a.m., before the Honorable Susan Paradise  
13                   Baxter, at the United States Courthouse, Courtroom B,  
14                   617 State Street, Erie, PA 16501.

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17  
18           For William Wolfe, et al.:

19                   Christian D. Bareford, Esquire  
20                   Office of the Attorney General

21           For the Defendant:

22                   Anthony DeFranco (Pro se)

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24                   Reported by Janis L. Ferguson, RPR  
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1 THE COURT: My apologies for our tardy return.  
2 All right. We just finished up with Dr. Lindemuth. And do  
3 you have any other witnesses?

4 MR. DeFRANCO: Is there an Officer Campbell?

5 THE COURT: Officer Campbell here?

6 MR. BAREFORD: No, ma'am. We were unaware that he  
7 was actually asking for Officer Campbell. We did not  
8 require him --

9 THE COURT: So you didn't bring him.

10 MR. BAREFORD: Correct.

11 THE COURT: Did you ask that he be here?

12 MR. DeFRANCO: I did.

13 THE COURT: You did ask.

14 MR. DeFRANCO: I asked for Dr. Lindemuth and  
15 Officer Campbell, but --

16 MR. BAREFORD: Ma'am, I can't speak to that. I  
17 don't know exactly what the context of that was. I can tell  
18 you that had I known he had a desire to do it, I would  
19 have --

20 THE COURT: You would have done that. Okay.  
21 Well, there's some mixup there. And how about one of the  
22 other folks here?

23 MR. DeFRANCO: I have no other witnesses.

24 THE COURT: Okay. Could you give me what we call  
25 a proffer. What sort of testimony did you plan to elicit

1 from Officer Campbell?

2 MR. DeFRANCO: Officer Campbell was present during  
3 the October 22nd, 2004 hearing before --

4 THE COURT: Me, okay.

5 MR. DeFRANCO: -- before you. He was the officer  
6 in the strip-and-search room. He witnessed Miss Rebele, who  
7 is in the courtroom, leave the conference room prior to Mr.  
8 Barr and I. And I had a visitor actually waiting for me --  
9 my mother -- after the hearing. And in her affidavit, she  
10 specifically stated that she was present when Mr. Barr  
11 made -- did not make a threat. It was merely whatever  
12 their -- he said.

13 THE COURT: I read that.

14 MR. DeFRANCO: And I -- Officer Campbell did see  
15 her leave prior, and --

16 THE COURT: You were going to have him --

17 MR. DeFRANCO: Right. Verify that.

18 THE COURT: So he -- did he witness the statement  
19 of Mr. Barr to you?

20 MR. DeFRANCO: No, ma'am. He witnessed --  
21 immediately after the hearing, I had a visitor waiting, so I  
22 didn't report back to my housing unit, as Miss Rebele said  
23 in her affidavit. She claimed I said, thank you, Mr.  
24 Barr --

25 THE COURT: You know, I read that, and I'm not

1 clear as to why that's important. Can you explain to me why  
2 that's important.

3 MR. DeFRANCO: Because it's an affidavit, and it's  
4 notarized. I did not go back to my housing unit.

5 THE COURT: So your point is that she's not  
6 credible --

7 MR. DeFRANCO: Exactly.

8 THE COURT: -- because she made that statement.  
9 It's not that that has something to do with the factual --

10 MR. DeFRANCO: That part of it.

11 THE COURT: Okay.

12 MR. DeFRANCO: And the other part is she left the  
13 room before Mr. Barr and I, and she couldn't have heard the  
14 conversation.

15 THE COURT: Okay. Oh, I see. She says in here  
16 that she --

17 MR. DeFRANCO: She was there, and she heard this  
18 and that and --

19 THE COURT: Okay. Are you going to do any  
20 testimony yourself, sir?

21 MR. DeFRANCO: It would be -- I could make it real  
22 brief. I know the Court -- I know the Court is in a hurry.  
23 I could probably --

24 THE COURT: Well, I was actually in a hurry  
25 before. I mean, we have time to get this done. I want to

1 get it done. I'm not going to rush you through. I was in a  
2 hurry to get the court reporter off, because she needed to  
3 be elsewhere at 1:00.

4 Do you want to be called by the defense,  
5 or --

6 MR. DeFRANCO: If they wish to, I wouldn't oppose  
7 it. I have nothing to hide.

8 THE COURT: Do you want to testify first? On your  
9 own?

10 MR. DeFRANCO: No.

11 THE COURT: No, okay. All right. So then we will  
12 turn it over to Mr. Bareford.

13 MR. BAREFORD: Yes, ma'am. Thank you.

14 At this time the Defendants would like to  
15 call Miss Carla Webb to the stand, please.

16  
17 C A R L A J E A N W E B B, first having  
18 been duly sworn, testified as follows:

19  
20 THE COURT: Please be seated. State your full  
21 name and spell your last name for the record.

22 THE WITNESS: Carla Jean Webb, W-E-B-B.

23  
24 DIRECT EXAMINATION

25 BY MR. BAREFORD:

1 Q. Miss Webb, where do you work?

2 A. Albion State Correctional Institute.

3 Q. And how long have you worked at Albion?

4 A. Approximately five and a half years.

5 Q. What do you do at Albion now?

6 A. I'm a corrections counselor.

7 Q. Are you the corrections counselor for  
8 Mr. DeFranco?

9 A. Yes.

10 Q. How long have you been his corrections counselor?

11 A. Since August of 2002.

12 Q. Could you just describe for the Judge what kind of  
13 contact you had with Mr. DeFranco as part of the routine  
14 performance of your duties as counselor.

15 A. Okay. My office is in the middle of a pod, so I  
16 have daily contact with Mr. DeFranco, along with another 127  
17 inmates. I see him pretty much day to day. If it's not  
18 just to say hello, sometimes he comes in the office. But  
19 it's regular contact on a daily basis.

20 Q. What does Mr. DeFranco do during the day?

21 A. He is employed in the law library, so he works  
22 during the day. He often is out in the day room associating  
23 with other inmates. I believe during the summertime he goes  
24 to the yard.

25 Q. Does Mr. DeFranco appear to get along well with

1 the other inmates in the pod?

2 A. Yes.

3 Q. And you know that how?

4 A. Just by visual interaction. By watching, by  
5 hearing, by talking with him.

6 Q. Does Mr. DeFranco perform any additional duties,  
7 for lack of a better way to describe it, within the --  
8 within the prison?

9 A. I know that he helps other inmates with legal  
10 paperwork and so on and so forth, helping them do their  
11 court process, along with his duties as a law clerk in the  
12 library.

13 Q. Does he perform any duties as a peer leader for  
14 any groups?

15 A. Yes, he is. He is a peer leader for my  
16 citizenship group.

17 Q. And how long has he been that peer leader?

18 A. He has been my peer leader since he came on the  
19 block in August.

20 Q. So he was a peer leader before --

21 A. Yes, he was trained --

22 Q. -- he came to the pod?

23 A. -- he was trained as a peer leader on another  
24 unit.

25 Q. What is that peer leader of a citizen group? What



1 does that do?

2 A. The program was designed to help other inmates  
3 learn how to adjust back into society. It teaches them  
4 moral reasoning, right versus wrong, victim empathy, and so  
5 on and so forth. It's just a -- it's supposed to be a  
6 nine-session program to reintegrate yourself into society,  
7 and learning the ways to abide by society rules.

8 Q. Have you had the opportunity to observe him as the  
9 peer leader of this group?

10 A. Yes, I have.

11 Q. And how does he conduct himself as a peer leader?

12 A. Very appropriately.

13 Q. Do you feel it's necessary to observe him every  
14 time that he conducts the group as a peer leader?

15 A. No. Not at all. I go in for one out of the nine  
16 sessions, and that's the victim empathy session. And  
17 otherwise he is running the group by himself.

18 Q. Do you have any problem with him doing that?

19 A. No.

20 Q. Are you aware of an issue in his life -- and I'll  
21 put a frame of reference. It would have been probably the  
22 first half of 2003 -- that had to do with the custody of his  
23 daughter?

24 A. Yes, I am.

25 Q. If you could just describe for the Judge exactly

1 what you recall from that period of time.

2 THE COURT: What date was that? I'm sorry.

3 Q. And if I mis -- I don't want to mischaracterize  
4 the time frame. I defined the question as the first half of  
5 2003. If I'm off a little bit, you know, by all means, feel  
6 free to adjust the dates on that.

7 A. I believe you're roughly around the same time. I  
8 know that he was dealing with an issue where his daughter  
9 did not want to come and see him at Albion, or her mother  
10 would not allow her to come to Albion and allow her to visit  
11 with his family. And he was having a real difficult time  
12 understanding why this was going on.

13 And he had known that I had previously worked at  
14 Children's Services, so he was asking a lot of questions  
15 about the legalities and, you know, can Children's Services  
16 get involved and so forth. And we would spend a lot of time  
17 talking -- talking about that.

18 Q. Describe what kind of policy you had with  
19 respect -- or that you have with respect to the inmates and  
20 their ability to have access to you.

21 A. On my unit, I -- I personally have an open-door  
22 policy. There is no set guideline as to what counselors  
23 need to do at Albion. So my policy is, if my door is open,  
24 they are free to come in at any point in time. If I'm busy,  
25 I can tell them that I'm busy. And they know, of course, if

1 my door is closed, they need to knock or -- I also have a  
2 sign-up sheet at the officer's desk that they can sign up.  
3 So if I'm in group or I'm not there, then I know that  
4 somebody needs to see me. And then there is also the  
5 request list that they can use to send to me that tells me  
6 that they want me -- they want to see me.

7 Q. During this period of time that we were just  
8 discussing about the issue with the custody of his daughter,  
9 did Mr. DeFranco come in and have frequent contact with you,  
10 occasional contact with you, or rare contact with you?

11 A. I would say frequent. We would talk at least on a  
12 weekly basis, if not more, regarding that situation. And  
13 other things too, not just regarding his daughter. We would  
14 just talk about some day-to-day things. But --

15 Q. What -- I'm sorry.

16 A. Oh, no, go ahead.

17 Q. Would you characterize this as a -- to the extent  
18 that you can, just given your observation of him and what  
19 you can recall, was that a stressful period of time for  
20 Mr. DeFranco?

21 A. I believe it was, yes.

22 Q. Do you have access to his inmate file, as his  
23 counselor?

24 A. Yes, I do.

25 Q. Are you familiar with the materials that are

1 contained within his inmate file?

2 A. Yes, I am.

3 Q. Are reports of his misconducts maintained within  
4 his inmate file?

5 A. Yes, they are.

6 Q. Are you familiar with what a report of misconduct  
7 looks like, and especially when it's completed?

8 A. Yes.

9 Q. Did you review the reports of misconduct that were  
10 maintained in his file?

11 A. Yes.

12 Q. Was there a portion of his misconduct report --  
13 let me back up. Are you familiar with a misconduct report  
14 as it related to an incident in which he was charged with  
15 threatening a staff member?

16 A. Yes.

17 Q. Did you review that misconduct report?

18 A. Yes, I have.

19 Q. Is there a portion on that misconduct report that  
20 the inmate himself, Mr. DeFranco, completed himself?

21 A. Yes, there is.

22 Q. Would that portion have to do with identification  
23 of witnesses that he would like to have called during his  
24 misconduct hearing?

25 A. Yes, it would.

1 Q. And did you review that portion that he completed?

2 A. Yes, I did.

3 Q. Do you recall if he gave any kind of explanation  
4 as to why he identified -- there's three officers; Sergeant  
5 Shape, Officer Irwin, or Officer Frey, as potential  
6 witnesses to this misconduct during the hearing?

7 A. I believe that he called them to testify on his  
8 behalf to show that what he had done with the officer who  
9 wrote the misconduct was joking around, and that he had  
10 joked around with him like that on numerous occasions  
11 before. So that's what he had called them for.

12 Q. Did Mr. DeFranco ever come and ask you about Z  
13 code status?

14 A. Yes, he did.

15 Q. Can you describe for the Judge the kind of  
16 communications that he would make with you with respect to a  
17 Z code status.

18 A. When he had first come on the unit, we had  
19 discussed why he was moved down to D unit from J unit. And  
20 he had mentioned that he had a Z code and that he lost his Z  
21 code. And what were the chances of him obtaining that Z  
22 code again. We had talked about it at length. I told him  
23 it would come up at an annual review or six months after the  
24 staffing. He kind of let it go at that.

25 As the time came around for his annual review, he

1 told me that -- it was a constant, you need to talk to  
2 Dr. Lindemuth; Dr. Lindemuth says I need a Z code; I need my  
3 Z code; you know I need my Z code; my cellmates are telling  
4 me this kind of thing, on a regular basis.

5 Q. Was that persistent? How would you -- let me  
6 rephrase the question. How would you characterize his  
7 communications with you when he would come in and discuss Z  
8 code?

9 A. (No response.)

10 Q. And more precisely -- actually, let me rephrase  
11 the question altogether. Disregard it. When he would come  
12 and ask you about Z code status, how often would he come in  
13 and ask you about that?

14 A. It started off maybe once a month or so, and it  
15 became more frequent. I can't give an exact number. But  
16 every -- every time that him and I would come into contact  
17 inside my office, he would ask about his Z code status and  
18 if I'm going to be staffed and will you recommend me if I --  
19 if I get up for staffing, do I have your vote kind of thing.

20 MR. BAREFORD: Your Honor, if I could just have  
21 one minute.

22 THE COURT: Certainly.

23 (Pause.)

24 BY MR. BAREFORD:

25 Q. Have you had opportunity to see Mr. DeFranco

1 demonstrate any violence towards fellow inmates?

2 A. I personally have not, no.

3 MR. BAREFORD: Ma'am, that's all I have. Thank  
4 you.

5

6 CROSS-EXAMINATION

7 BY MR. DeFRANCO:

8

9 Q. Good morning -- good afternoon.

10 THE COURT: Hold on one second.

11 Q. Good afternoon, Miss Webb. I have a couple  
12 questions for you regarding your testimony.

13 You have never seen me become violent or me become  
14 violent with you, correct?

15 A. Correct.

16 Q. Have former cellmates came to you requesting to be  
17 moved or told you things about me I exhibited that would,  
18 like, cause you to worry?

19 A. I'm not sure what you mean by "worry".

20 Q. Have my cellmates, any of them, came to you  
21 regarding my behavior that bothered them in the cell?

22 A. Yes.

23 Q. Okay. And how many times, Miss Webb, do you think  
24 that happened?

25 A. Several.

1 Q. Several? At least several?

2 A. Um-hum.

3 Q. Okay. And --

4 A. Not all of them. Just -- just two.

5 Q. Just two?

6 A. Um-hum.

7 Q. And what did you do as a result of those  
8 complaints?

9 A. Eventually, they were -- they were moved.

10 Q. They were moved?

11 A. Um-hum.

12 Q. Okay. Let me draw your attention to an Inmate  
13 Miley.

14 THE COURT: Can we ask her what they complained  
15 of? Do you mind?

16 MR. DeFRANCO: Oh, absolutely, Your Honor.

17 THE COURT: I don't want to mess with your  
18 cross-examination, but I would like to know what their  
19 complaints were about.

20 THE WITNESS: Two of his cellmates were  
21 complaining that he at times was overbearing, acting  
22 paranoid, would do things inside the cell that would cause  
23 them concern, and would -- he would want them to do things  
24 for him. Just very demanding. This is my cell, this is how  
25 things are going to work. And just always constant fear



1 of -- he would talk a lot about fear of retaliation, fear of  
2 things that are going on, fear of everything else, and the  
3 institution is doing this and the institution is doing that.

4 And I think that these two cellmates in  
5 particular, who were very young, it was a difficult time for  
6 them, and after a while -- one lasted much longer than the  
7 other. But after a while, it just became too much for them.

8 THE COURT: All right, thank you. Go ahead, sir.

9 BY MR. DeFRANCO:

10 Q. And I went through -- according to -- and I'm  
11 going to take Mr. Barr's word for it. I don't know why, but  
12 I will. That I went through 10 cellmates during that time.  
13 Would you think that's a long time -- a lot of cellmates to  
14 go through?

15 A. I don't -- I can't honestly say if I know that  
16 that's how many you went through, but --

17 Q. If it was, if that was accurate. Is that a lot of  
18 cellmates to go through?

19 A. In comparison to? I mean --

20 Q. The normal -- a normal inmate.

21 THE COURT: There is one for you.

22 A. I was going to say, that is a difficult question  
23 to answer, depending on units or housing situations or  
24 behaviors. You know, it's not just you. It's the other  
25 person also. You know --

1 Q. I understand.

2 A. -- there are people that can maintain in two cells  
3 together, and there are people that cannot.

4 Q. Can you tell this Court specifically an incident  
5 regarding an Inmate Miley, M-I-L-E-Y, and exactly what he  
6 was doing not to go in the cell with me.

7 A. He was trying to work out on the block for longer  
8 periods of time, offering to do --

9 Q. I'm talking about the day that -- an incident when  
10 he was actually moved. What was he doing?

11 A. Telling the officers that you were threatening  
12 him.

13 Q. He was telling --

14 A. And that if he would not deliver commissary to  
15 another inmate for you, that you were going to do something  
16 to him. So he felt fearful that if he didn't do what you  
17 were asking him to do, because he had been doing it for so  
18 long, that he was going to get hurt.

19 Q. That's what he said? I wasn't aware of that.  
20 But -- that's news. But -- was he crying?

21 A. No. Not to me, he was not crying.

22 Q. You didn't hear about him crying tears?

23 A. No, I did not.

24 Q. Okay.

25 A. I had talked to Miley at length about that whole

1 situation. But history shows with Inmate Miley, too, he has  
2 done this with four or five other cellmates since then. So  
3 it could be a behavior pattern. I'm not sure if it was just  
4 you or -- so he has had more cellmates than you. So I'm not  
5 sure if that's a pattern of something he does when he gets  
6 tired of being with people, that he comes up with stories.

7 Q. That's fair enough. And let me ask you this:  
8 There was testimony given by Dr. Lindemuth today regarding Z  
9 code. Can you tell me about that process. And the Court.

10 THE COURT: What specifically?

11 MR. DeFRANCO: Specifically how it works.

12 A. An inmate can go to a counselor or a psychiatrist  
13 or a medical doctor or a nurse. Someone up in healthcare  
14 can initiate what is called a Z code staffing, where they  
15 feel that an inmate should be housed in a single cell. What  
16 happens at that point is the counselor arranges for the  
17 packet to come out, they sit down with an inmate and the  
18 unit manager, and they do what is called a formal staffing.

19 At that staffing, the counselor makes a vote, the  
20 unit manager makes a vote. The packet is then forwarded to  
21 the psychologist, the classification program manager, the  
22 major, both deputies, and the superintendent of the facility  
23 has the final vote on all packets.

24 Q. Can you tell me how you voted this time in my  
25 staffing.

1 A. Are you referring to the one in March?

2 Q. Yes. That is my only staffing --

3 A. Well, you have to -- I voted that you should have  
4 a single cell.

5 Q. Can you tell me who else voted that I should have  
6 a single cell. You don't have to look at them. You have to  
7 look over here.

8 A. Myself, Mr. Reilly.

9 Q. Who is Mr. Reilly?

10 A. He is the chief psychologist at SCI-Albion.

11 Q. He voted favorably for me?

12 A. Yes, he did.

13 Q. Anybody else, do you know of, that voted favorably  
14 for me?

15 A. No.

16 Q. You did?

17 A. Yes.

18 Q. And Mr. Reilly did?

19 A. Correct.

20 Q. And Mr. Reilly don't see me very often.

21 A. I don't know Mr. Reilly schedule, so I don't know  
22 if he sees you often or not.

23 Q. Well, you apparently know mine.

24 A. I live with you every day.

25 Q. Right. So he doesn't see me regularly, correct?

1           A.    I can't answer that.  I don't know if you go to  
2 Mr. Riley's office once a week, once a day, once an hour.  I  
3 don't -- I don't have his schedule --

4           Q.    Let me ask you a question, then.  When -- when did  
5 you know you were going to be called as a witness in this  
6 case?

7           A.    Last Friday.

8           Q.    Last Friday?  And in that time, you have known  
9 since Friday, a week ago today, that you were going to be a  
10 witness.

11          A.    Correct.

12          Q.    Do you read any of my legal mail?

13          A.    Did I read any of your legal mail?

14          Q.    Legal stuff.  Talk to me about the legal thing --  
15 legal case?  This case.

16                THE COURT:  Which?  Did she read your legal mail  
17 or talk to you about it?

18                MR. DeFRANCO:  Yeah, read -- both.  I want to know  
19 if this witness knew that there was going to be a hearing on  
20 this past Friday.  I just learned that she was -- Wednesday,  
21 I believe, morning, she told me that she was going to be an  
22 actual witness in this case.

23                THE COURT:  Did you read his legal mail since  
24 Friday?

25                MR. DeFRANCO:  Yes.  I mean, before I knew she was

1 a witness.

2 A. You showed me on -- I believe, it was Monday --  
3 maybe Monday or Tuesday. I'm not sure. But you showed me  
4 on Monday that -- I believe it was maybe the original Court  
5 Order -- or original -- I don't even know what actually it  
6 would be called. But you showed me the paperwork that you  
7 filed with the courts about your Z code. You had about four  
8 or five papers, and you were telling me about certain  
9 testimony from -- from people here.

10 Q. And you didn't tell me that you were going to be a  
11 witness? You didn't let me know that?

12 A. I heard there was a court hearing on Friday and  
13 that I was going to be here. Whether I was going to be  
14 called, I hadn't talked to anybody. I was informed by my  
15 unit manager that there was going to be a hearing here this  
16 Friday.

17 MR. DeFRANCO: Go ahead, Your Honor.

18 THE COURT: No, that's all right. Go ahead.

19 Q. Are you -- last Friday -- and I have been very  
20 leary of the unit, as you know. And since all this  
21 happened, in my cell, I overheard in my cell -- how close is  
22 my cell to the officers' desk, would you say, approximately?

23 A. I --

24 Q. I'm the closest cell to --

25 A. Maybe from here to where you're sitting. Maybe a

1 little bit farther.

2 Q. While I was in my rack, I heard laughter -- I'm  
3 not -- I'm not -- I don't believe you were there. I'm not  
4 saying that. I just wonder if you have any information.  
5 There was -- it was between 2:00 and 2:30. Guards were  
6 laughing and saying someone is going to lose -- and I can't  
7 swear it was my name. But they were laughing -- this was on  
8 Friday.

9 THE COURT: You have to ask a question.

10 MR. DeFRANCO: Okay.

11 Q. Are you aware of anybody thinking that it was  
12 funny that I would be losing the Z code?

13 A. I'm not aware of any officers discussing your Z  
14 code.

15 Q. Okay. I'm going to show you some -- do you know  
16 John Rogers? Do you remember that inmate?

17 A. Um-hum.

18 Q. Do you remember what happened to him?

19 A. I believe he was moved off the unit and maybe  
20 paroled. I'm not sure if he was paroled right from our unit  
21 or if he moved to a different unit and then paroled. I'm  
22 not sure -- I can't --

23 Q. Do you know if he was my cellmate?

24 A. Yes, he was.

25 Q. He was? What did he do when he was my cellmate?

1 A. What do you mean, what did he do?

2 Q. Did he do anything?

3 A. He was at block-out, he went to groups, he went to  
4 classes. I mean, is that what you're asking me?

5 Q. John Rogers -- I'm going to read this to you --

6 A. Okay.

7 THE COURT: What are you reading from?

8 MR. DeFRANCO: This is an official report by John  
9 Rogers -- by captains; Captain Jones and Captain Abu  
10 (phonetic), who is now a Major. And although there is a  
11 typo. It is supposed to be 2003. It says 2003. They  
12 corrected it.

13 THE COURT: All right.

14 Q. He was my cellmate. DA-57 was my cell, Miss Webb,  
15 before I was moved there --

16 A. It was 37 or --

17 Q. 57.

18 A. Okay, 57.

19 Q. Okay. And it says -- this is to him. This is  
20 John Rogers.

21 A. This is John Rogers speaking?

22 Q. This is John Rogers' other report. It is not a  
23 misconduct. It's an other report.

24 THE COURT: Who wrote the report?

25 MR. DeFRANCO: It was typed, and it was signed by



1 Captain Abu and Captain Jones.

2 THE COURT: Okay.

3 BY MR. DeFRANCO:

4 Q. It says, "You spoke to myself and Captain Jones  
5 and requested and was granted administrative custody. You  
6 stated you were having anxiety attacks and were afraid for  
7 your safety from inmates in general population. You did not  
8 provide the names of any inmates who had caused you to feel  
9 threatened." And then it goes on, "I have requested  
10 replacing AC status for protective custody," signed John  
11 Rogers. Were you aware of that?

12 A. Now that you're reading it, yes.

13 MR. DeFRANCO: Then I got an affidavit, Your  
14 Honor. It was submitted with my objections. These are all  
15 part of the record. John Rogers made that affidavit before  
16 he maxed out. He didn't come back to the block. But he  
17 finally came out of protective custody.

18 THE COURT: You have his affidavit?

19 MR. DeFRANCO: Yes. It's right here. You have it  
20 too. It's in the objections, attached to my objections.

21 THE COURT: All right.

22 BY MR. DeFRANCO:

23 Q. Reads, "I, John Rogers, was forced to cell up with  
24 Inmate Anthony DeFranco in 2003." And let me stop there.  
25 Have I ever signed a cell agreement with anybody? To your

1 knowledge.

2 A. To my knowledge, no. But cell agreements don't go  
3 through me.

4 Q. "We were only cellmates for a short period of  
5 time, because I took protective custody and was moved away.  
6 DeFranco was a high-strung, who was set in his ways. He was  
7 also unstable, in my opinion. For example, on a few  
8 occasions, I would walk near him. He would jump up and grab  
9 at me until he realized it was me. He also made," as you  
10 said, "numerous cell rules. For example, I had to keep the  
11 cell clean." Then it has some stuff scratched out. I don't  
12 know what it said. It's scratched out.

13 "I felt that I could not snitch on him because  
14 maybe him and others look at me as a snitch. DeFranco would  
15 set traps up to see if any guards or anybody would come into  
16 his cell while he was out. He would put baby powder on the  
17 floor. He constantly believed that people were out to get  
18 him and wanted to protect himself as much as he could."

19 He said, "I also remember waking in the middle of  
20 the night to find DeFranco standing near my bunk, just  
21 staring at me. When I asked him in the morning what he was  
22 doing, he did not recall doing this. I did report this to  
23 unit counselor, and she thought he may have been  
24 sleepwalking."

25 And, "I am making this statement now because I am

1 leaving prison and won't see DeFranco again. This is made  
2 pursuant to -- subject to penalty of perjury. John Rogers."  
3 Signed September 9th, '04.

4 Was he one of the inmates that complained?

5 A. He had mentioned that he had some concerns with  
6 you sprinkling baby powder on the floor and with the rules  
7 and the demands that you placed upon him inside the cell,  
8 yes.

9 Q. Cosimo LaBerto (phonetic), did he ever complain  
10 about me?

11 A. C-O-S-I-M-O. Did he ever complain about --

12 Q. Yes.

13 A. To me, no.

14 Q. I have an affidavit by Mr. LaBerto. This one is  
15 also signed in September. Basically saying the same thing.  
16 He wanted --

17 MR. BAREFORD: Your Honor, he has already asked  
18 whether or not she has seen this or whether or not -- more  
19 precisely, he asked whether or not --

20 THE COURT: This one -- sustained. She hasn't  
21 seen this one, so you can't get it in on her.

22 BY MR. DeFRANCO:

23 Q. How about Daniel Francis? Has he ever complained  
24 to you about me?

25 A. Complained?

1 Q. Complained.

2 A. (No response.)

3 Q. Did he ever say anything?

4 A. He said that he didn't like living with you,  
5 because you were too -- you're nervy, you're paranoid,  
6 you're high-strung, and you put too many rules on people  
7 inside your house. You think it's yours.

8 Q. Do you think there's a problem with that?

9 A. When you're sharing something with somebody else,  
10 yes, those cells belong to the Department of Corrections, to  
11 the State. They don't belong to you.

12 Q. Do you see there's a problem with an individual  
13 who acts like that?

14 A. No. I believe that probably 80 percent of the  
15 population at Albion feels exactly the same way that you do.  
16 That they have a right to their time, their cell, their  
17 this, their that.

18 So, I mean, if you're asking a general question on  
19 the whole, most of the guys on my unit say things like that;  
20 well, this is my cell, my hut.

21 Q. If I had a request slip here signed by you that  
22 you said you believed I needed a Z code, would that be  
23 untrue?

24 A. I'd like to see it.

25 Q. I'm asking the question first. Would you answer

1 the question.

2 A. Do I believe it would be true? If a psychiatrist  
3 and a psychologist makes a recommendation that an inmate  
4 needs a Z code for mental health reasons, because I am not a  
5 mental health expert, I tend to go with them.

6 Q. You tend to go with them?

7 A. Um-hum.

8 Q. The vote goes -- you make your own independent  
9 vote, correct?

10 A. Correct.

11 Q. Did you make your own independent vote based on me  
12 in March of 2004?

13 A. I made an independent vote, but I based it off the  
14 recommendation of the psychiatrist and the chief  
15 psychologist.

16 Q. And that's the way you are supposed to make your  
17 vote?

18 A. What --

19 THE COURT: Hold on. Hold on. You're asking her  
20 how she is supposed to make her vote. All right. Go ahead.  
21 You can answer.

22 A. I got lost there for a minute. Do you want to  
23 repeat that, please.

24 Q. On these votings, are they supposed to be  
25 independent votes?

1           A.     That would be an independent vote, yes. But  
2 because I'm not an expert on your mental health or deal with  
3 your mental health on a daily basis, I would speak to the  
4 professionals and the experts, which would be Dr. Lindemuth  
5 and Mr. Reilly, who was the chief psychologist.

6           Q.     And they believed I needed a Z code?

7           A.     Yes.

8           MR. BAREFORD: Well, that sort of -- you know,  
9 lack of first-hand knowledge. What she can testify to is  
10 they both recommended that he have Z code. That doesn't  
11 necessarily mean the exact same thing.

12          THE COURT: Overruled. I'll allow that. That's  
13 all right.

14          Q.     The answer was?

15          A.     They did.

16          Q.     They did. Let me ask you a question. I'm sorry,  
17 I'm calling you by your maiden name. I gave you a subpoena  
18 yesterday.

19          A.     Correct.

20          Q.     Correct. And it was -- I read -- counsel's -- he  
21 objected to it, because for some reason it was supposed to  
22 be in the records department. Is my inmate file kept in the  
23 records department, or is it kept in your office?

24          MR. BAREFORD: Ma'am, actually, this isn't -- I  
25 don't know if this necessarily -- first of all, I don't know

1 how aware the Court is of what he is making reference to.

2 THE COURT: I have no idea.

3 MR. BAREFORD: This was -- Mr. DeFranco, as he  
4 just explained, handed a subpoena to --

5 THE COURT: For his records?

6 MR. BAREFORD: Yes, ma'am. Yesterday.

7 THE COURT: Yesterday.

8 MR. BAREFORD: And I received a copy of that  
9 yesterday, and I responded with a written objection to his  
10 attempt to gain access to his inmate file by handing a  
11 subpoena as a party directly to a witness who is not the  
12 records custodian for the institution.

13 That's what -- that's what this is, and  
14 that's from -- from what I could tell, that's about what  
15 he's going to ask her --

16 MR. DeFRANCO: Your Honor, that's not what I'm  
17 saying. And I wish he would not try to read my mind.

18 THE COURT: Well, he's telling me what he did too.

19 MR. DeFRANCO: Okay. But I wanted her to bring  
20 the file with her. I didn't want access to it.

21 THE COURT: You wanted her to bring the file with  
22 her. See, his point is he objected to it because she's not  
23 the records keeper of that record.

24 MR. DeFRANCO: But it's in her office. She keeps  
25 it. It's sitting right in her office. She has physical

1 control over it.

2 THE COURT: Who are the Defendants in this case?

3 MR. BAREFORD: The Defendants? She is not a named  
4 Defendant in this case. It's William Wolfe, Steve Reilly,  
5 Dennis Brunner, Jackson, and a couple of John Does.

6 THE COURT: I'm trying to decide if that should  
7 have been a discovery request. Is a third party subpoena  
8 requested, or is it --

9 MR. BAREFORD: It wasn't even a third -- it was a  
10 request for production of documents on a third party.

11 THE COURT: On a third party.

12 MR. BAREFORD: Yes, ma'am. Served by  
13 Mr. DeFranco --

14 THE COURT: So it was on her as the third party,  
15 when --

16 MR. BAREFORD: Yes, ma'am.

17 THE COURT: -- officers of the DOC are Defendants.

18 MR. BAREFORD: Yes, ma'am.

19 THE COURT: Does he have access to his file?

20 THE WITNESS: I believe that --

21 THE COURT: I ask this of Mr. Barr at every  
22 hearing. I can't remember. Does he have access to his  
23 file?

24 THE WITNESS: I believe he does have access to it  
25 if he would go through the proper channels to receive that,



1 yes. I do not have permission to grant that. That would be  
2 something that the superintendent and the records department  
3 would have to release that to him. That is something that I  
4 cannot do.

5 THE COURT: Okay. So your attorney -- or the  
6 attorney for the Department of Corrections told you not to  
7 bring that file with you today, because you objected to it;  
8 is that correct?

9 THE WITNESS: That is correct.

10 THE COURT: Would you have brought it had he not  
11 objected to it?

12 THE WITNESS: No. I would not have. I had no  
13 intent. What I meant -- regarding this case, I had no  
14 intentions of bringing that file.

15 THE COURT: Why is that?

16 THE WITNESS: There would be nothing that I would  
17 need in it.

18 THE COURT: Oh, I see. It's not because you  
19 weren't allowed to take it.

20 THE WITNESS: Correct.

21 THE COURT: Well, this should have been decided  
22 before we came here, but --

23 MR. BAREFORD: I have a copy of the subpoena as  
24 well, ma'am. I should have volunteered this minutes ago. A  
25 copy of the subpoena as well as a copy of my written

1 objection.

2 THE COURT: Have you filed that?

3 MR. BAREFORD: No, ma'am. Just because I got it  
4 late yesterday afternoon, so I responded in writing --

5 THE COURT: The timing was the problem.

6 MR. DeFRANCO: The timing was the problem. This  
7 is not his fault either. I got it on Wednesday.

8 THE COURT: Well, I can't -- I can't resolve that  
9 issue if the file is not here, so let's move on to another  
10 topic.

11 MR. DeFRANCO: Okay. And I just wanted to bring  
12 that up, because inside the file there was -- I believe  
13 there was evidence that supports my Z code in this case.  
14 However, it's not before you, so --

15 THE COURT: Well, you can ask her if she recalls  
16 something in your file, but -- you can ask her if she  
17 recalls something in your file. If she doesn't, we'll move  
18 on. If she does, she can testify to it. First-hand  
19 knowledge, she can testify to it.

20 BY MR. DeFRANCO:

21 Q. Do you recall the staffings I had, Miss Webb --  
22 because you said the Z code -- this big Z code thing,  
23 everybody has been looking at it, and you had to look at it,  
24 and apparently you have been deposed by counsel or Mr. Barr  
25 regarding this case. Did you look at my prior Z code votes?

1 A. No, I did not.

2 Q. You never got -- never had a chance to see them?  
3 You never seen why I was denied a Z code?

4 A. There was no need, based off -- I believe --  
5 and -- I believe that the reason that you were denied a Z  
6 code at that time was because of your anxiety disorder not  
7 being serious enough to preclude you to have a single cell  
8 on your own. Something along those lines. That's why it  
9 was taken from you.

10 Q. Okay. So if -- if that's true -- and which that  
11 is my recollection, so I'm in agreement with you. If that  
12 was my only problem mentally, and the people who are making  
13 the votes to take it, would it be an informed vote? In  
14 other words, if a person looking at my packet only thought I  
15 suffered from anxiety, I didn't have -- I wasn't borderline  
16 mixed-personality disorder --

17 A. I have never -- I have never seen a diagnosis of  
18 you of borderline mixed-personality disorder in your file.

19 Q. Okay. Well, I can show you one today.

20 A. Well, that's fine.

21 Q. Obviously --

22 A. I'm just saying, you're asking me, and that is not  
23 something --

24 Q. But I'm --

25 A. I --

1 (Proceedings interrupted by the court reporter.)

2 Q. My question is, if that was not in my file --  
3 apparently it's not. So this Z code committee did not make  
4 an informed decision regarding it. They only believe I  
5 suffered from --

6 THE COURT: Is that -- that's not a question.

7 A. Your entire --

8 THE COURT: Hold on. Hold on.

9 THE WITNESS: Oh, I'm sorry.

10 THE COURT: Hold on. That's not a question.  
11 You're making argument again. Ask her a question.

12 MR. DeFRANCO: Okay.

13 THE COURT: She can't -- go ahead.

14 BY MR. DeFRANCO:

15 Q. If the Z code committee only had a partial file of  
16 my history of what is wrong with me and didn't have the  
17 complete -- my complete mental makeup, and they were voting  
18 on it, would it be a qualified vote?

19 MR. BAREFORD: Ma'am -- and that's -- I'm going to  
20 object for two reasons. First of all, it assumes facts not  
21 in evidence. It also calls for the witness to make the  
22 ultimate determination as to the question of law that's  
23 before this Court.

24 THE COURT: Sustained. You can't ask a witness --

25 MR. DeFRANCO: I understand -- I understand.

1 THE COURT: You can make that argument.

2 BY MR. DeFRANCO:

3 Q. Are you very happy with me? You can speak  
4 honestly.

5 A. What do you mean by "happy"?

6 Q. You're not -- are you happy with me or displeased  
7 with me over all of this?

8 A. I'm not -- well, that's irrelevant to anything.  
9 You -- you are a part of my job. So I don't get happy or  
10 unhappy with people. This is my job.

11 Q. Well, let me ask you this: Is anything adverse  
12 going to happen to me because of this?

13 A. Why would you think that? Has anything adverse  
14 happened yet?

15 Q. Well, we haven't been before this Court yet, and  
16 we haven't got back to SCI-Albion yet.

17 A. This has been ongoing for years. This is part of  
18 the issue --

19 Q. This has been going on since, I believe, August.

20 A. Of 2002.

21 Q. No. 2004.

22 A. 2002.

23 Q. I just filed it. I don't know what lawsuit we're  
24 talking about. I only filed one ever, and this is it. But  
25 let me just --

1           MR. DeFRANCO: May I stand up, Your Honor? I have  
2 a chart. I know it's not what you're used to seeing, but I  
3 only have access to --

4           THE COURT: It's all right.

5           MR. DeFRANCO: -- the limited stuff that  
6 inmates --

7           THE COURT: Well done. The court deputy will hold  
8 it up.

9           (Discussion held off the record.)

10          MR. DeFRANCO: And just for the record, Your  
11 Honor, Miss Webb is a good counselor.

12          THE COURT: All right. That will be your  
13 testimony.

14          MR. DeFRANCO: Okay. I want you to look at  
15 something, if you would. This is Mr. Barr's declaration.

16          MR. BAREFORD: Ma'am, actually, before you get  
17 into this -- I don't want to interrupt the flow. Do you  
18 mind if I just look at that?

19          THE CLERK: Oh, I'm sorry.

20          (Discussion held off the record.)

21          MR. DeFRANCO: It's a flow chart.

22          THE COURT: Be careful, though. This is not her  
23 declaration, so she has to have personal knowledge about  
24 everything you are going to ask her.

25          MR. DeFRANCO: I know. I'm going to give her

1 Mr. Barr's declaration.

2 THE COURT: I know that. But she can't make  
3 opinions about that. You have to ask her things of her  
4 personal knowledge. I'm going to make an opinion about his  
5 declaration. I decide his credibility.

6 BY MR. DeFRANCO:

7 Q. Have you read Mr. Barr's declaration?

8 A. Is that what you handed me on Monday?

9 Q. Yes.

10 A. I skimmed through it, yes. Did I thoroughly read  
11 it? No.

12 Q. I have it here. And what it says is -- and it  
13 tells exactly what you said about how the Z codes --

14 MR. BAREFORD: Your Honor -- and I apologize to  
15 Mr. DeFranco for interrupting. But just for purposes of the  
16 line of questioning --

17 THE COURT: You want a proffer?

18 MR. BAREFORD: Yes. Or at least a foundation as  
19 far as to how her ability to be able to even answer  
20 questions without -- I mean, if he's going to --

21 THE COURT: I understand.

22 MR. BAREFORD: Yes, Your Honor.

23 THE COURT: We want to know where you're going  
24 with this line of questioning before --

25 MR. DeFRANCO: I want to know --

1 THE COURT: -- just so we don't get in trouble  
2 beforehand.

3 MR. DeFRANCO: All right. I want to know what  
4 significant progress constitutes -- according to Mr. Barr,  
5 Your Honor. And we'll go with what he said -- that I was  
6 Z-coded March 26th, '02 until 6/24/02, which is  
7 approximately three months.

8 THE COURT: Okay.

9 MR. DeFRANCO: In between that time, I was placed  
10 in RHU for 45 days. I came out of RHU to a new housing  
11 unit, and Mr. -- according to Mr. Barr's declaration,  
12 inmates are classified annually. Only when they show  
13 significant progress, quote/unquote --

14 THE COURT: I understand. And what are you going  
15 to --

16 MR. DeFRANCO: -- will a Z code be removed.

17 I wanted to know if 44 days out of the hole  
18 for threatening of a staff constitutes significant progress.  
19 In the counselor's view.

20 MR. BAREFORD: May I be heard, Your Honor?

21 THE COURT: Yes.

22 MR. BAREFORD: She is not the one who made that  
23 determination. Mr. Barr was the one that made that  
24 determination. And so basically what he's asking her to do  
25 is to speculate what Mr. Barr meant by, you know, weighing



1 the factors of this -- whatever the Z code committee was, or  
2 the decision-maker on not --

3 THE COURT: First you have to ask her if she was  
4 the one who made the decision as to what your status would  
5 be when you came out of RHU. And if she was, then you can  
6 continue. If not, the objection will be sustained.

7 MR. DeFRANCO: Well, I know she was not.

8 THE COURT: Well, she was on the committee later,  
9 so she may have been part of the committee, so you can ask  
10 her.

11 BY MR. DeFRANCO:

12 Q. You were on a committee at one time for my  
13 staffing, correct?

14 A. Correct. But there -- it's not a -- it's not a  
15 committee. It's a staffing team. It's a unit team. So the  
16 word "committee" -- I think that's where I'm getting  
17 confused. There is no actual --

18 Q. That was what -- Dr. Lindemuth kept using the word  
19 "committee".

20 A. Okay. Well, it's the staffing process.

21 Q. Right.

22 A. I am a unit team member voting, yes.

23 Q. Okay. Can you understand by looking at that  
24 flowchart --

25 THE COURT: No.

1 MR. DeFRANCO: No?

2 THE COURT: No. Did she make the determination of  
3 significant progress in June of 2002.

4 BY MR. DeFRANCO:

5 Q. Did you make the decision of significant progress  
6 in June of 2002?

7 A. No. I was not part of that --

8 THE COURT: Objection sustained. You can't pull  
9 that. You will have to ask Mr. Barr those questions, if  
10 he's the one.

11 BY MR. DeFRANCO:

12 Q. On direct examination, you testified that I run a  
13 citizenship group, correct?

14 A. Correct.

15 Q. And you said that I do a good job, and that you  
16 observe me.

17 A. Correct.

18 Q. But I -- I'm puzzled about one thing. You said  
19 that you're only in there one time, and you run it during  
20 that time. You're only in the group during one session.

21 A. Correct.

22 Q. Was your testimony.

23 A. Correct.

24 Q. So if you're only in there during the one session  
25 and you're running it, how do you know what kind of job I

1 do?

2 A. Because I sat in and observed you for the first  
3 nine times that you did it before I allowed you to sit in it  
4 on your own.

5 Q. And that is when I came out of the hole?

6 A. Correct. That is when -- no. It is when you  
7 transferred to D unit. You were already out of RHU for  
8 several months. You were removed from the RHU, I believe,  
9 in May of 2002. You did not arrive on my unit until August.  
10 And I believe correctly you didn't become my peer leader  
11 until maybe October of '02. Because I still had several  
12 peer leaders that got moved to the R unit --

13 Q. Right.

14 A. -- and that's why you took over. So I still had  
15 my peer leaders running it, and when they left -- several  
16 months after you got there. So you were on my unit for a  
17 while before you became a peer leader.

18 Q. Okay. I came on your unit in August -- on  
19 August 18th of 2002. In with Inmate Sherlock. And I have  
20 here my name, while I was teaching a citizenship group on  
21 September 3rd. That would be approximately three weeks  
22 after I was let out of the hole.

23 A. You were in the RHU pending transfer at that time,  
24 not for your misconduct. That's why you were in the RHU.  
25 You hadn't had a misconduct since March of '02, correct? Or

1 July? I'm not sure.

2 Q. You're incorrect. I was -- I was only in RHU  
3 pending transfer --

4 THE COURT: All right. We're way -- way off  
5 point. Where are you going? What is your ultimate  
6 question?

7 MR. DeFRANCO: My ultimate question is why was I  
8 teaching this group three weeks after I was let out of RHU.

9 THE COURT: All right.

10 A. Because you were the only peer leader I had on the  
11 unit then, apparently, if that was the one you were running.  
12 You had -- you had been trained. You were one of the few  
13 people at SCI-Albion that was specifically picked by  
14 counselors to be trained for this program.

15 THE COURT: Are you trying to show that you are a  
16 model prisoner? Is that what you're doing?

17 MR. DeFRANCO: I don't want the Court to look at  
18 me in a -- you know what I mean? In a bad light. I'm not  
19 trying to present myself right now --

20 THE COURT: Well, I just want to know where you're  
21 going with this line of questioning. Because if it's off  
22 point, then -- but are you trying to show the Court that you  
23 didn't do a good job on this, or you -- I'm not -- I don't  
24 understand what this line of questioning --

25 MR. DeFRANCO: I don't know -- I'm sorry. I don't

1 know if I should have been teaching a citizenship group  
2 three weeks after I was let out of the hole.

3 A. Then why did you offer?

4 Q. I didn't. You advised me, because I had -- I went  
5 to school to teach it. When I was in Z code.

6 THE WITNESS: Can I say something, please?

7 THE COURT: Do you want to talk to her first? Go  
8 ahead.

9 THE WITNESS: We don't force inmates to run  
10 groups. I mean, it's that simple. Especially a peer-led  
11 group. I wouldn't want anybody in a peer-led group that  
12 didn't want to be there or didn't think that they could run  
13 a group. So, therefore, I can't force anyone to --

14 THE COURT: I want us to move on. This line of  
15 questioning --

16 MR. DeFRANCO: I didn't --

17 (Proceedings interrupted by the court reporter.)

18 THE COURT: I'm talking. When I talk, she listens  
19 to me and not to you. So you know.

20 This is going nowhere, that I -- what I need  
21 to make a determination for a preliminary injunction, so I'm  
22 going to have you move on. All right?

23 MR. DeFRANCO: Okay.

24 THE COURT: Thank you.

25 MR. DeFRANCO: I guess -- I guess -- and only a

1 couple more minutes, Your Honor.

2 THE COURT: All right, thank you.

3 BY MR. DeFRANCO:

4 Q. Miss Webb, there was testimony given during an  
5 evidentiary hearing concerning this case in October.

6 Mr. Barr specifically told this Court that I was not staffed  
7 in March of 2004 for Z code. He said to the Court it was my  
8 annual review. Would that be accurate or inaccurate?

9 A. It would be accurate that you had both. You had  
10 an annual review, where your custody level was reviewed, and  
11 you also had a separate Z code staffing held on March 10th  
12 of 2004. But you also had an annual review.

13 Q. So if I had a request slip stating that -- in your  
14 handwriting, that your annual review is in January and your  
15 staffing in March is because of your request for a Z code,  
16 that would be incorrect?

17 A. We had to go back -- in 2004, policy was changed  
18 that we went to the initial month of inception<sup>2</sup> that is why  
19 some people were getting annual reviews two or three times  
20 in one year, because we -- they had changed policy and we  
21 had to go back to the initial date of when you came into the  
22 Department of Corrections, whether it was on your first  
23 number, second number, third number, or fourth number.

24 So according to our state system, whether that's  
25 accurate or not, January was the month. So that is why it

1 is set to be reviewed in January. Your annual would have  
2 been in January.

3 Q. Okay. But my March review was specifically for my  
4 Z code, right?

5 A. You had a March 10th, 2004 Z code staffing, yes.

6 Q. It wasn't an annual review?

7 A. They are two separate things, Mr. DeFranco.

8 Q. I understand that. I'm telling you what Mr. Barr  
9 testified to.

10 A. And I am telling you, March 10, 2004, you had a Z  
11 code staffing.

12 Q. Okay. So I just wanted to clear that up.

13 A. That's fine.

14 Q. All right. So my last question is this: You  
15 voted favorably for me to have a Z code, and it was based  
16 upon the two psychologists' and the psychiatrist's  
17 recommendation.

18 A. Correct.

19 Q. And how did you get the psychiatrist's  
20 recommendation?

21 A. You handed me a paper that she had apparently  
22 written in 2000, and I believe -- I'm not sure off the top  
23 of my head, 2001, 2002, when you were originally trying for  
24 a Z code, and you kept telling me to call her, call her,  
25 call her. So finally I called her, and we talked about it.

1 Q. So she would have been lying on the stand if she  
2 would have said she sent it to you?

3 A. Correct. You handed it to me. You personally  
4 handed me a paper from her. You showed that -- you showed  
5 me that paper.

6 Q. I -- that paper did not come from Dr. Lindemuth?

7 A. It was a paper written by Dr. Lindemuth --

8 Q. That's not my question.

9 A. -- that you were in possession of. You asked me  
10 how I knew her recommendation, and it was because you gave  
11 it to me first and then told me to call her.

12 Q. Dr. Lindemuth did not send you that paper?

13 A. After I talked to her on the phone, yes. But you  
14 asked me how I originally got wind of it, and that was from  
15 you, when you came to my office and handed me a paper from  
16 her. And then you told me to call her, which you repeatedly  
17 told me to do on a daily basis.

18 Finally, I called Dr. Lindemuth. She said  
19 staffing for a Z code based off of this, and I will forward  
20 the paper. And I said, would it be this paper, and I read  
21 it to her, and she said, exactly the same paper.

22 Q. Her testimony was she called you. I guess that's  
23 for the Court to determine the credibility of witnesses, so  
24 we'll let that go.

25 MR. DeFRANCO: That would be my last question,



1 Your Honor.

2 THE COURT: That's the last question? Okay.

3 Redirect, Mr. Bareford?

4 MR. BAREFORD: I have no further questions.

5 THE COURT: Then you're excused.

6 THE WITNESS: Thank you.

7 THE COURT: You may step down.

8 MR. BAREFORD: Actually, Your Honor, we do not  
9 anticipate requiring her to be called back to the stand,  
10 unless --

11 THE COURT: I can't imagine why she would want to  
12 stay around. If she would like to return to Albion, she  
13 may.

14 MR. BAREFORD: Yes, ma'am. The Defendants would  
15 like to call Sue Ann Rebele.

16  
17 S U E A N N R E B E L E, first having  
18 been duly sworn, testified as follows:

19  
20 THE CLERK: Please be seated. State your full  
21 name and spell your last name for the record.

22 THE WITNESS: My name is Sue Ann Rebele,  
23 R-E-B-E-L-E.

24 MR. DeFRANCO: Your Honor, I need to ask if  
25 Mr. Barr is going to testify. If he is, I would ask him to

1 be excluded from the courtroom.

2 MR. BAREFORD: I have no objection to that. I  
3 don't know for certain whether or not I will require it,  
4 but, obviously, I don't have any problem with it.

5 THE COURT: His being out during the testimony?

6 MR. BAREFORD: Yes, ma'am.

7 THE COURT: Okay, Mr. Barr, will you please step  
8 to the hallway.

9

10 DIRECT EXAMINATION

11 BY MR. BAREFORD:

12

13 Q. Miss Rebele, where do you work?

14 A. I work at SCI-Albion.

15 Q. And what do you do at SCI-Albion?

16 A. Right now, I'm the first shift nursing supervisor.

17 Q. And could you briefly describe what those duties  
18 entail.

19 A. I am in charge of the -- making sure that all of  
20 the nursing -- the duties are done from 6:00 till 2:30. I  
21 schedule nurses, I make sure medication is where it's  
22 supposed to be. Conference with doctors, outside hospitals,  
23 outside agencies.

24 Q. Do you -- as part of the duties of that position,  
25 have you had the opportunity to review the medical file of

1 Mr. DeFranco?

2 A. Yes, I have.

3 Q. And have you reviewed that medical file?

4 A. Yes, I have.

5 Q. Are you familiar with the contents of that medical  
6 file?

7 A. Yes.

8 Q. Could you explain to the Judge what medication  
9 Mr. DeFranco is on.

10 A. Under the doctor -- medical doctor's care, he's on  
11 aspirin, Nitroglycerin, and Lopressor.

12 Q. What does he take aspirin for?

13 A. It's a blood thinner. He has a problem called  
14 mitral valve prolapse, and it helps keep the blood thin  
15 enough so that it won't clot and possibly throw blood clots  
16 that could damage Mr. DeFranco.

17 Q. So in laymen's terms, this is -- there's a valve  
18 in his heart --

19 A. Yes.

20 Q. -- that does not --

21 A. Doesn't close completely.

22 Q. Therefore, blood thinning would be important?

23 A. Yes, it would.

24 Q. In order to avoid blood clots?

25 A. Correct.

1 Q. And that's the reason he takes aspirin?

2 A. Correct.

3 Q. How long has he been taking the aspirin?

4 A. I believe since June of 2003.

5 Q. What kind of problem is mitral valve prolapse?

6 A. It's general -- generally a congenital problem.

7 He could have had it since he was born.

8 Q. And does the need to take a blood thinner -- does  
9 that have anything to do with a person's age for a condition  
10 like mitral valve prolapse?

11 A. Not necessarily.

12 Q. So you wouldn't -- what -- why would, if at one  
13 point he did not take an aspirin a day, and now he does take  
14 an aspirin a day, what would trigger starting him on an  
15 aspirin a day?

16 A. Blood work. Other conditions, such as  
17 hypertension.

18 Q. Okay. So it would be -- you said he takes  
19 aspirin. He also takes --

20 A. Lopressor.

21 Q. -- Lopressor?

22 A. Yes. It's an antihypertensive.

23 Q. And when did he start taking that?

24 A. I believe he started that at the same time as he  
25 started the aspirin.

1 Q. Do you remember what the dosage of the Lopressor  
2 was when he first started to take that?

3 A. I believe it was 25 milligrams. It was half of a  
4 tablet.

5 Q. How long was he taking a half a tablet?

6 A. I am not quite sure. I think it probably was for  
7 a few months, and then he -- he went back to see Dr. Baker  
8 or Dr. Bashline, and they increased it, due to -- he  
9 complained of chest pain.

10 Q. What was it increased to?

11 A. To 50 milligrams.

12 Q. Which is one tablet?

13 A. Yes.

14 Q. How often does he take Lopressor?

15 A. Once a day.

16 Q. So he takes one tablet of Lopressor a day and one  
17 tablet of aspirin a day?

18 A. Yes.

19 Q. Do the aspirin and the Lopressor have to do with  
20 the same condition of the heart?

21 A. Yes.

22 Q. And that condition being?

23 A. The mitral valve prolapse.

24 Q. And high blood pressure can affect that?

25 A. Yes.

1 Q. What about the Nitroglycerin?

2 A. Nitroglycerin is taken for chest pain. It's  
3 typically prescribed for angina, which is a non-specific  
4 chest pain. However, while reviewing his chart, Dr. Baker  
5 did make note that he has nontypical angina pectoris, okay,  
6 which he correlates with anxiety and not actual chest pain.

7 Q. Does Mr. DeFranco take Nitroglycerin for the high  
8 blood pressure or the mitral valve prolapse?

9 A. No.

10 Q. And is that what you meant by he takes it for  
11 anxiety --

12 A. Yes.

13 Q. -- versus -- now, how often does he take  
14 Nitroglycerin?

15 MR. DeFRANCO: Your Honor, I'm going to object. I  
16 don't know how this witness would know all this.

17 Q. Could you explain to the Court exactly what type  
18 of foundation or basis --

19 A. Well, I'm a registered nurse. I know  
20 pharmacology. I have read the physician's notes from your  
21 chart.

22 MR. DeFRANCO: Did Dr. Baker tell you any of this?

23 THE COURT: Well, she said she read the chart.

24 THE WITNESS: His note said that.

25 THE COURT: Wait a minute. Are you objecting to

1 her --

2 MR. DeFRANCO: It's hearsay.

3 THE COURT: -- explaining medical -- you're saying  
4 you're objecting to her explaining the medication you're  
5 taking?

6 MR. DeFRANCO: That she knows why I'm taking  
7 Lopressor.

8 THE COURT: She said it's in your chart, is her  
9 testimony.

10 THE WITNESS: It is in your chart.

11 THE COURT: Why you are taking Lopressor.

12 MR. DeFRANCO: Then I will withdraw my objection,  
13 Your Honor, but --

14 THE COURT: I mean, is that not the case?

15 THE WITNESS: Correct.

16 THE COURT: You said why he's taking it is in the  
17 chart.

18 THE WITNESS: Yes.

19 BY MR. BAREFORD:

20 Q. I don't know if you answered the question. How  
21 often does he take Nitroglycerin?

22 A. He takes it as he needs it. It is generally  
23 prescribed, and it is prescribed for Mr. DeFranco, as it  
24 generally is, one tablet underneath your tongue. And if  
25 that does not relieve the pain, you can repeat that dose two

1 more times for a total of three tablets.

2 Q. Over what kind of time period are we talking about  
3 with three tablets?

4 A. If it's not relieved within 15 minutes, because  
5 the tablets are taken five minutes apart, then he should  
6 come up to medical and be evaluated at that time. Because  
7 his chest pain is typically not going to go away after -- if  
8 it's not relieved by three Nitros.

9 Q. And that's -- did you say that was a -- as needed,  
10 when he would take one?

11 A. As needed, yes.

12 Q. So if he doesn't feel chest pain, does he take the  
13 tablet?

14 A. No.

15 Q. When did he first go on Nitroglycerin? Is that  
16 contained in the record?

17 A. It is. I am not exactly sure of the date.

18 Q. Would it have been -- did it correspond in time  
19 with the -- the other medication that he would start, the  
20 Lopressor or the aspirin?

21 A. I believe it was.

22 Q. How many pills does a person receive upon getting  
23 a prescription of Nitroglycerin?

24 A. There is a little brown bottle to keep the light  
25 out, and it contains 25 tablets.



1 Q. 25 tablets. Does it sound familiar, if he started  
2 that on June 2003 -- I don't want to put words in your  
3 mouth. Does that refresh your recollection?

4 A. Yes, it does.

5 Q. Is that --

6 A. On or around June 13th.

7 Q. Okay.

8 A. Because I believe he got his first bottle June the  
9 19th.

10 Q. Did you happen to notice when he -- the next time  
11 he refilled his Nitroglycerin?

12 A. I want to say in July. But I'm not sure. After  
13 that, it was a very lengthy time.

14 Q. Next time, would that have been November of 2003?

15 A. Yes.

16 Q. And then again not until --

17 A. I believe it was September the 16th of this year.

18 Q. Of 2004.

19 A. Yes.

20 Q. So when he refilled it in November, how many  
21 tablets did he obtain at that point?

22 A. 25.

23 Q. So 25 tablets. He did not refill again, according  
24 to his medical chart, until the 6th of September, 2004?

25 A. Correct.

1 Q. And that is nine, 10 months later?

2 A. Yes.

3 Q. And he could potentially take upwards of three of  
4 them at a time.

5 A. Yes.

6 Q. Or he could just take one at a time.

7 A. Right.

8 Q. Does his medical record also indicate when he  
9 would go see a doctor for a physical?

10 A. Yes.

11 Q. Did you happen to see whether or not he had  
12 obtained physicals in the last two years?

13 A. Yes, as a matter of fact he did. He is -- he is  
14 regularly scheduled to be seen every 180 days, because  
15 that's the maximum that the physicians will order his  
16 medication for<sup>2</sup> at that time they are called medication  
17 reviews. He goes in, has a set of vital signs done by the  
18 nurse, and sits down and talks with the doctor.

19 Q. What do the vital signs include?

20 A. Vital signs consist of blood pressure, pulse,  
21 respiration.

22 Q. Did he have an under-50 physical in September of  
23 2003?

24 A. Yes, I believe he did.

25 Q. Is that memorialized in his medical records?

1 A. Yes, it is.

2 Q. Does that memorialize whether or not he voiced any  
3 complaints at that point?

4 A. Yes, it does.

5 Q. What does it say?

6 A. He says -- the physician wrote that he had no  
7 complaints, his condition was stable, his vital signs were  
8 stable, and he was sent back to his housing unit.

9 Q. What about again in May of 2004; did he have a  
10 physical at that point?

11 A. Yes.

12 Q. What is memorialized in his medical records?

13 A. No complaints voiced.

14 Q. What about in October of 2004?

15 A. The same thing.

16 Q. He had a different injury in October of 2004?

17 A. I believe he had a knee problem.

18 THE WITNESS: A knee problem?

19 MR. DeFRANCO: I fell out of my bunk trying to get  
20 my Nitro pills. I was on the top bunk --

21 THE COURT: You're not testifying. If she knows,  
22 yes, if she doesn't know, that's it.

23 MR. DeFRANCO: Sorry, Your Honor.

24 THE COURT: That's okay. She was looking to you  
25 for help. She can't do that.

1 BY MR. BAREFORD:

2 Q. Does his medical record indicate that he did, in  
3 fact, sustain an injury falling out of a bunk --

4 A. Yes, they do.

5 Q. -- for that injury?

6 A. Yes, they do.

7 Q. Okay. Does it indicate when he first came into  
8 the custody of the Department of Corrections, what kind of  
9 medical intake -- what he obtained at Camp Hill?

10 A. Yes, a very brief one.

11 Q. What does it describe at that point?

12 A. To the best of my recollection, it did say that he  
13 had a heart murmur, but he had no psych. history.

14 Q. So what do you mean by -- when it say "no psych.  
15 history", how does that normally work? What does that mean?

16 A. He was not under any care for any type of mental  
17 health problem.

18 THE COURT: What date was that?

19 THE WITNESS: I believe it was 1993.

20 Q. Would he have been asked as part of that intake --

21 A. Yes.

22 Q. -- whether or not he had a condition?

23 A. Yes.

24 Q. Is that answer that's reflected in there  
25 indicative of the response that was memorialized?

1 A. Yes.

2 MR. BAREFORD: Ma'am, that's all I have.

3 THE COURT: Any cross-examination?

4 MR. DeFRANCO: Yes.

5

6 CROSS-EXAMINATION

7 BY MR. DeFRANCO:

8

9 Q. This is very interesting, because I didn't go to  
10 Camp Hill.

11 A. Well, wherever the CDCC was. Okay?

12 Q. Well, it's interesting. And it's interesting for  
13 a number of reasons. One is --

14 THE COURT: Questions. Remember to ask questions.

15 Q. Dr. Lindemuth would have been lying when she said  
16 that I was put on at a different prison Paxil, Celexa, et  
17 cetera, et cetera? Who would prescribe those to me?

18 A. A physician would prescribe that.

19 Q. A psychiatrist wouldn't?

20 A. A psychiatrist is a physician.

21 Q. I mean, there is a difference to me, and to this  
22 Court, I think --

23 A. But a physician can also prescribe them. It  
24 doesn't necessarily have to be a psychiatrist.

25 Q. So your testimony is, is that when I was at

1 Western Penitentiary, I was not seen by psychiatry and put  
2 on a number of different psychotropic drugs?

3 A. No, Mr. DeMarco [sic], that's a  
4 mischaracterization.

5 THE COURT: You're going to object to this  
6 mischaracterization?

7 MR. BAREFORD: Yes.

8 Q. It's DeFranco.

9 A. That is not my testimony, no, Mr. DeFranco.

10 Q. I believe you said I came from Camp Hill, and I  
11 was not indicated --

12 A. That's why I asked the date. I asked the date,  
13 and it was in 1993. Yes, it was 1993. And it was the  
14 intake note. It was from the CDCC, and I generally  
15 correlate the intake and reception with Camp Hill. Okay?  
16 Back then, back in 1993, I honestly don't know where that  
17 was then.

18 THE COURT: Hold on.

19 MR. BAREFORD: I would just ask her to explain  
20 what the CDCC is.

21 A. It's the Correctional Diagnosis Center. When  
22 they -- when an inmate is sentenced, they go to the  
23 classification center, and then they are sent to a different  
24 prison. They spend a few months there.

25 THE COURT: So the testimony was, when he first

1 came into the prison system after sentencing --

2 THE WITNESS: Yes.

3 THE COURT: -- he did not have a psychiatric  
4 history.

5 THE WITNESS: Correct. That's what it indicates  
6 on the record.

7 BY MR. DeFRANCO:

8 Q. Okay. Do you recall giving testimony in this case  
9 in October over the phone?

10 A. Yes, I do.

11 Q. And do you recall, ma'am, specifically telling  
12 Judge -- I was explaining to Judge Baxter that a  
13 Dr. Palamere (phonetic) -- if I'm mispronouncing his name, I  
14 apologize -- that he wrote in my file something about double  
15 cell, and you said, Your Honor, I'm looking at it right now,  
16 and it does not say that? Do you recall saying that?

17 A. Yes. And then you pointed it out to me, and I did  
18 say, yes, I did see it.

19 Q. Okay<sup>2</sup> I asked you, what does it say, and you said,  
20 I can't read the writing.

21 A. Correct.

22 Q. Right?

23 A. Yes.

24 Q. Then I asked for permission to read it<sup>2</sup> then I  
25 could read the writing. I'm not a physician<sup>2</sup> I

1 specifically --

2 A. Saw two words that said "double cell".

3 Q. Right. So you could read it after I read it.

4 A. Yes.

5 Q. Can you explain that.

6 A. When you deal with physicians, especially with  
7 physicians who write all day long, okay, and you're looking  
8 at a bunch of chicken scratch, it tends to all run together.  
9 If someone can specifically point out a word or two, then  
10 it's much easier, for me, at least, to actually see those  
11 words then. I still could not read anything else in that  
12 note, other than those two words.

13 Q. So you read the -- your testimony is this, then:  
14 I told -- I informed the Judge about what it said.

15 A. Um-hum.

16 Q. And you broke in and said Your Honor --

17 THE COURT: I got it the first time. You don't  
18 have to review it. I do.

19 BY MR. DeFRANCO:

20 Q. The double cell -- is that file here?

21 A. Yes, as a matter of fact, it is.

22 Q. Because the word "double cell" --

23 THE COURT: It was sent to me. I was looking at  
24 the transcript of that hearing.

25 MR. DeFRANCO: I never got a copy of that either,



1 Your Honor.

2 THE COURT: Well, I asked them to send it to me.  
3 I didn't necessarily ask them to send it to you.

4 MR. BAREFORD: Actually, just for purposes of  
5 completion, I didn't get a copy of that either.

6 THE COURT: You didn't?

7 MR. BAREFORD: No. That went from -- that record,  
8 straight to the Judge.

9 THE COURT: Straight to me.

10 THE WITNESS: Yes, it was faxed, because I  
11 actually left the hearing room then and then came back.

12 THE COURT: I do recall when it came. But the  
13 testimony from October.

14 MR. DeFRANCO: Counsel, you never got that  
15 transcript?

16 THE COURT: You have to pay for it if you want it.  
17 I get it, though. The parties have to pay for it. Once you  
18 read it to her or pointed it out to her, she agreed; there  
19 it is<sup>2</sup> then she explained that it was out of context,  
20 because it comes right after the list of drugs.

21 What was the date of that entry?

22 THE WITNESS: I can point it out to you.

23 MR. DeFRANCO: I think it was April.

24 THE WITNESS: There is the drugs, and there is  
25 where it says "double cell".

1 THE COURT: You know, I thought I was going to be  
2 able to read this. My husband is a doctor. I thought I was  
3 going to be able to read this. Anger --

4 MR. DeFRANCO: Impulsivity. I can recall some of  
5 it, Your Honor. It is easier to read in the ink. I know it  
6 is a little --

7 THE COURT: "Out of hole." Mr. Barr will love  
8 that. Then it has a list of your drugs. Then it says  
9 "double celled". He makes no comment about the double cell.  
10 He's just listing it as a fact.

11 MR. DeFRANCO: Right.

12 THE COURT: Do you have a different read on that?

13 MR. DeFRANCO: I have asked other -- like my  
14 brother, and I even asked Dr. Lindemuth about that, and she  
15 said the only reason a psychiatrist would make mention of it  
16 is if there was a concern about it.

17 THE COURT: And that's the psychiatrist?

18 MR. DeFRANCO: Yes. That's the head psychiatrist  
19 for the Western District of Pennsylvania DOC.

20 THE COURT: Okay. Well, that's not testimony, so  
21 I can't -- you can make that argument to me, but I can't --  
22 you know. All right. So where are we going?

23 MR. DeFRANCO: Okay.

24 BY MR. DeFRANCO:

25 Q. At any rate, I wanted to point that out; I

1 received an affidavit, ma'am, signed by you. Do you know  
2 who it was written by? Your affidavit?

3 THE COURT: Is this the affidavit dated 11/8/04?

4 MR. DeFRANCO: Yes, ma'am. Your Honor.

5 A. Mr. Barr and I wrote that.

6 Q. You guys sat down together and typed it out  
7 together?

8 A. We didn't sit down. We did it over the phone.

9 Q. And it's your testimony here today that you were  
10 in a room when Mr. Barr told me, after he got done  
11 testifying to the Court, that there were available single  
12 cells in SCI-Albion, that he engaged me to a conversation,  
13 just explaining to me that I could go anywhere, like  
14 SCI-Dallas?

15 A. Yes, I was in the room when he said that.

16 Q. Your testimony under oath is you were in the room  
17 when he said that?

18 A. Absolutely.

19 MR. DeFRANCO: Can I get a chart, Your Honor?  
20 Because I'm going to have Mr. Barr show where everybody was  
21 seated.

22 THE COURT: Pardon me? What do you want?

23 MR. DeFRANCO: I want a chart. I want her to show  
24 me where everybody was seated when he said that.

25 THE COURT: She can say it out loud. She can say

1 it out loud. Where was everyone seated when --

2 BY MR. DeFRANCO:

3 Q. Was everybody seated? Was everybody sitting?

4 A. I don't recall --

5 Q. You don't recall?

6 A. I don't recall if we were all sitting. I know  
7 during the testimony, you sat on this side of the --

8 Q. I'm talking about the discussion, obviously, when  
9 Judge Baxter was not on the phone any longer --

10 A. Correct.

11 Q. -- and Mr. Barr was waiting for Mr. Osborne to  
12 show up --

13 A. Yes.

14 Q. -- because there was another hearing scheduled.

15 A. Yes.

16 Q. Okay. And I'm talking about at that time, when  
17 this discussion, according to you, took place, where were  
18 we? Were we still seated? Were we standing?

19 A. I believe I was standing.

20 Q. You were standing?

21 A. Yes, I believe I was standing.

22 Q. Mr. Barr and I were -- what?

23 A. Probably sitting. I can't --

24 Q. You don't remember that?

25 A. As best as I recall --

1 Q. We were sitting?

2 A. Yes. Because I had left the room to actually copy  
3 and fax those papers to the Judge. I came back because I  
4 was having a problem with the telephone number.

5 Q. Okay.

6 A. Okay? So I was in and out of that room --

7 Q. But the Judge was still on phone then.

8 A. Yes. I was in and out of that room. Okay? After  
9 we hung up, after the Judge was -- was no longer on the  
10 phone --

11 Q. Right.

12 A. -- I came back and double-checked to make sure  
13 that I had the right area code. But the conversation --

14 Q. After Judge Baxter told you that the fax machine  
15 was working, you came back in to see if you had the right  
16 area code?

17 A. Yes, sir. Because I had my secretary do both area  
18 codes, 814 and 412.

19 Q. It's not making any sense to me, because I could  
20 hear the fax going over the machine at that time.

21 THE COURT: You couldn't have, because it's not in  
22 the same room.

23 MR. DeFRANCO: Well, I thought I did. I thought I  
24 heard something in the background. You said it was coming  
25 in right now. But maybe it was you saying it, Your Honor;

1 it's coming in now.

2 THE COURT: I do recollect something to that  
3 effect, that it was coming in.

4 MR. DeFRANCO: Because maybe I didn't hear the  
5 machine, but I know I -- it was conveyed --

6 THE COURT: All right. But what is your point for  
7 her?

8 MR. DeFRANCO: Well, my point is when Mr. Barr  
9 testifies, I want to see if they all go together, everything  
10 fits.

11 BY MR. DeFRANCO:

12 Q. So then what happened? After Mr. Barr was so kind  
13 enough to point out to me that I could go to SCI-Dallas,  
14 across the state, as opposed to, say, SCI-Forest that just  
15 opened up, which is an hour away, right, that he was just  
16 being real nice to me.

17 THE COURT: Is there a question?

18 MR. DeFRANCO: That was the question.

19 Q. Why would he pick out Dallas, across the state?

20 A. I can't answer that question.

21 Q. Okay<sup>2</sup> then what happened after -- after that  
22 discussion happened?

23 A. I don't recall. But I do recall the --

24 Q. You asked --

25 (Proceedings interrupted by the reporter.)

1 THE COURT: Let her answer the question.

2 A. I do recall the conversation, and the conversation  
3 was that if SCI-Albion had no single cells, in order for you  
4 to get a single cell, the possibility of a transfer to  
5 SCI-Dallas or another prison would be possible.

6 Q. Okay. What don't make sense to me is this: If  
7 Mr. Barr just got done testifying to Judge Baxter that there  
8 were available single cells at SCI-Albion that he could put  
9 me in that day, which the Judge wrote in her report and  
10 recommendation, why would he engage me in that conversation?

11 A. You would have to ask him.

12 MR. BAREFORD: Your Honor, this is a --

13 THE COURT: Sustained. Keep going.

14 BY MR. DeFRANCO:

15 Q. And then what happened -- we were on the star  
16 phone. What do you call them phones --

17 THE COURT: They do not have to be nice to you,  
18 Mr. DeFranco. They typically are not nice when they are not  
19 happy, so -- there's no law that makes them be nice to you.

20 MR. DeFRANCO: That, Your Honor, I don't  
21 understand.

22 THE COURT: Well, you were saying why would he say  
23 something that mean. It was just a comment. Go ahead.

24 BY MR. DeFRANCO:

25 Q. Can you tell the Court what happened immediately

1 after this conversation took place.

2 A. I believe I left.

3 Q. Did we leave together?

4 A. I don't recall that.

5 Q. You don't recall if we left together?

6 A. No, I generally don't recall when I walk out with  
7 an inmate.

8 Q. Your affidavit specifically says I thanked  
9 Mr. Barr and went back to my housing unit.

10 A. I don't have that piece of paper in front of me.  
11 That happened in October, and a lot has happened since then.

12 THE COURT: Your question was whether she walked  
13 out with you.

14 Q. Did you walk out of the room with me and witness  
15 me walk back to my housing unit, as your affidavit says?

16 A. No. I assumed you went back to your housing unit.

17 Q. Are you supposed to make assumptions when you make  
18 out affidavits?

19 THE COURT: No, that is an improper question.  
20 Come on. We have been through this over and over. The  
21 sentence reads, "Inmate DeFranco thanked Mr. Barr for his  
22 time and returned to his housing unit."

23 Q. And just so we're clear --

24 THE COURT: That's her testimony. You can  
25 cross-examine her on that testimony. Well, you did. You



1 have asked her, did you know for sure that I went back to my  
2 housing unit. She said, no, I assumed it. Anything else?

3 BY MR. DeFRANCO:

4 Q. Okay. Did you leave with me, or did you stay in  
5 the room with Mr. Barr?

6 A. I do not recall.

7 Q. You don't recall?

8 A. No, I don't.

9 Q. But you recall -- where was Mr. Barr and I when we  
10 had this discussion about SCI-Dallas?

11 A. You were in the teleconference room.

12 Q. Where were we at? Were we seated or standing?

13 A. I do not recall whether you were sitting or  
14 standing.

15 Q. You just don't recall that?

16 A. No, I don't.

17 Q. And did you leave with Mr. Barr, or did you leave  
18 by yourself?

19 A. I don't recall that either.

20 Q. Wow. Hum. That's amazing. You recall a lot  
21 about my medical history --

22 A. That's because I just went over your medical  
23 history.

24 Q. And you're pretty good at that.

25 A. Because it's in writing.

1 MR. BAREFORD: Actually, Your Honor, now this  
2 is --

3 THE COURT: Now this is harassment. This is  
4 harassment. Do you have a question?

5 BY MR. DeFRANCO:

6 Q. Miss Rebele, I got a couple signed affidavits that  
7 say that you left that room and went back to the medical  
8 department before Mr. Barr and I. That means you left the  
9 room first --

10 THE COURT: Do you have those affidavits?

11 MR. DeFRANCO: Yes, I do.

12 THE COURT: Who are they by?

13 THE WITNESS: One is by an inmate employee, who  
14 their security levels are very -- to work out where they  
15 work at, Your Honor, they work in the strip-and-search  
16 areas.

17 THE COURT: And they were there?

18 MR. DeFRANCO: Yes. I have to resubmit this,  
19 because I made a mistake and tried to send it to the clerk,  
20 and I forgot to send two copies, so I had to resubmit it.

21 THE COURT: Okay. So they sent it back.

22 MR. DeFRANCO: But this is the affidavit of what  
23 he witnessed.

24 THE COURT: All right. Who is the other one?

25 THE WITNESS: You have it too. It's by -- well,

1 Officer Campbell, who I wanted to testify today, I had an  
2 affidavit where he said everything in it was accurate, but  
3 he didn't want to sign it at the fear of losing his job.

4 THE COURT: And where was Officer Campbell?

5 MR. DeFRANCO: He was in the strip-and-search room  
6 that day.

7 THE COURT: And you were in the strip-and-search  
8 room?

9 MR. DeFRANCO: These rooms are adjacent to one  
10 another.

11 THE COURT: All right. Now, let's go further.  
12 What is your point by -- I think I have asked this to you  
13 already. What are you trying to show me by telling me that  
14 she went out of the room before you and Mr. Barr did?

15 MR. DeFRANCO: She -- she was not there when  
16 Mr. Barr threatened me. She wasn't there for a discussion,  
17 that nice discussion when Mr. Barr's demeanor was very nice  
18 and --

19 THE COURT: Okay. So you are --

20 MR. DeFRANCO: Impeaching.

21 THE COURT: You are trying to impeach her  
22 testimony in the affidavit. All right.

23 MR. BAREFORD: Ma'am, if I could be heard on this.

24 THE COURT: All right.

25 MR. BAREFORD: He's asking her to testify -- if

1 I'm following this, he's asking her to testify about  
2 something that -- even assuming that everything that he says  
3 is true, would have occurred after she had already left the  
4 room. So I'm not entirely certain --

5 THE COURT: Yes, I'm not following that.

6 MR. BAREFORD: And if I may.

7 THE COURT: All right.

8 MR. BAREFORD: He's got this affidavit from this  
9 guy, this inmate, this fellow inmate who is working in the  
10 vicinity, and included in that affidavit is an explanation  
11 that he saw, quote, the lady from medical leave the room  
12 before Mr. Barr, as well as Inmate DeFranco. What exactly  
13 that means, that speaks for itself. It's not entirely  
14 certain whether or not -- because that level of detail is  
15 not included in that -- whether or not he saw her going to  
16 the fax machine and coming back in, or whether or not he saw  
17 her leaving for good.

18 But the point that he's trying to make -- and  
19 he can still make this point. He just can't do it through  
20 this witness. The point that he's trying to make is there  
21 was some kind of conversation that would have taken place  
22 after Miss Rebele left the room, because this fellow inmate  
23 saw her leave the room, but there was a period of time --

24 THE COURT: But this inmate doesn't have any idea  
25 whether a conversation took place before she left.

1 MR. BAREFORD: Yes, ma'am.

2 THE COURT: I understand. Well, the testimony is  
3 as it is for this. Do you have a question for her in regard  
4 to this?

5 MR. DeFRANCO: Yes.

6 BY MR. DeFRANCO:

7 Q. Let me ask you this: Did I leave you and Mr. Barr  
8 alone after that hearing, or did you leave first? Who left?

9 A. I believe I left first.

10 Q. So then you don't know what was said between  
11 Mr. Barr and me.

12 A. Not after I left, no. But I do know what  
13 conversation took place while you were in the room2 I --  
14 now, granted, I did leave the room and came back twice.

15 Q. But you don't know where Mr. Barr and I were  
16 seated or where -- what -- when he was telling me this nice  
17 thing about SCI-Dallas, this nice place I can go to.

18 A. No, I don't recall where everyone was standing  
19 during that conversation, but I did hear the conversation  
20 about the single cell and the possibility of a transfer.

21 Q. Can I ask you a question?

22 A. Yes.

23 Q. Did you hear Mr. Barr testify to the Judge that if  
24 he felt that I needed a single cell, he could put me in a  
25 single cell at SCI-Albion that day?

1 MR. BAREFORD: Ma'am, this is asking for the  
2 witness to agree with what has been transcribed as part of  
3 the original --

4 THE COURT: Yes. It's a matter of record, what  
5 was said in here.

6 MR. DeFRANCO: I don't have the record.

7 THE COURT: I have the record. But the point is,  
8 it doesn't forward anything. If she heard that, and then  
9 she testifies, which she has, that she heard Mr. Barr say  
10 that, so what? That's what I'm trying to get to.

11 MR. DeFRANCO: If Mr. Barr --

12 THE COURT: So is she going to say that Mr. Barr  
13 did something wrong? She can't say that. I mean, that's  
14 not her -- he said what he said. All she can tell you is  
15 what she heard.

16 MR. DeFRANCO: Okay, but my point is, Your Honor,  
17 if --

18 THE COURT: You can make the argument, then, that,  
19 therefore, he said something that he shouldn't have said at  
20 one time or the other.

21 MR. DeFRANCO: Right. But the thing is this: He  
22 just got done testifying to you that there is available open  
23 single cells at SCI-Albion. Why would he talk to me about  
24 sending me to --

25 THE COURT: I don't know that. But neither does

1 she. She doesn't know why he said that either. If you  
2 wanted to know that, you should have called Mr. Barr when it  
3 was your case in chief, when you were --

4 MR. DeFRANCO: Well, I didn't know I could do  
5 that.

6 THE COURT: I told you, you could call anybody who  
7 was here.

8 MR. DeFRANCO: That's why I asked him if he was  
9 going to testify to -- and, I apologize, I don't know --  
10 this is the first time I have been through this.

11 THE COURT: I understand that. But I did say, do  
12 you have anybody else you want to --

13 MR. DeFRANCO: I didn't know I could just call  
14 those people. I thought I had to call my own witnesses if I  
15 wanted them.

16 THE COURT: Well, you called Dr. Lindemuth.

17 MR. DeFRANCO: Right. I asked for her. I told  
18 you, I believe -- I didn't subpoena her, I asked -- and I'm  
19 just --

20 THE COURT: All right. All right. But your case  
21 is over. I mean, you have done your motion, 2 then you  
22 said, that's all I have, 2 so we're on the defense. If he  
23 doesn't call Mr. Barr, we don't have his testimony, other  
24 than what he said in this hearing and his affidavit. Do you  
25 understand?

1 MR. DeFRANCO: Right. Okay.

2 THE COURT: Okay. I just want to get this moving.  
3 I don't want it to go down, you know, empty alleys, and I --  
4 and stay here till 5:00, if we can get this moving. I want  
5 the information I need to make a correct decision.

6 So I don't know why Mr. Barr said that, but I  
7 have testimony from Mr. Barr in a hearing, and I have  
8 testimony from him in an affidavit, and those speak for  
9 themselves. If you have questions of -- you disagree with  
10 her about where she was, but that's her testimony. All  
11 right?

12 MR. DeFRANCO: All right. I apologize. I just  
13 have -- I just -- I just get frustrated with --

14 THE COURT: Well, it's very frustrating asking  
15 questions as an attorney, because you never get the answers  
16 you want.

17 MR. DeFRANCO: I want the truth.

18 THE COURT: You take the facts as they come.

19 MR. DeFRANCO: I'm as truthful as I can be.

20 THE COURT: I understand.

21 MR. DeFRANCO: It's one thing after another.

22 THE COURT: But I'm concerned about Miss Rebele  
23 right now. You asked her questions. If you have no more  
24 questions for her, then we'll go back to redirect. All  
25 right?



1 MR. DeFRANCO: I have no further questions for her  
2 then, Your Honor.

3 THE COURT: All right. Do you have any redirect?

4 MR. BAREFORD: No, ma'am.

5 THE COURT: Then you are excused. Thank you very  
6 much.

7 All right. Your next witness.

8 MR. BAREFORD: Nothing further. Defendant has  
9 called its witnesses. We don't intend to call anyone else.

10 THE COURT: Then I'm going to ask for you each to  
11 make argument to me now. I want to hear -- and you can have  
12 the rest of the folks out in the hall, if there are any,  
13 come on in. They are allowed in at that point.

14 I am going to ask you each to make argument.  
15 This is where you tell me all those things that you were  
16 thinking along the way.

17 My decision today is based on this: I have  
18 to know if under the Farmer v. Brennan standard, if the  
19 Defendants are being deliberately indifferent to a serious  
20 threat or medical need. Do you understand?

21 MR. DeFRANCO: Yes, ma'am.

22 THE COURT: And I discussed that with you in our  
23 last hearing<sup>2</sup> we have the law actually quoted from that case  
24 in the filing since then. Now -- and in my order.

25 So I need to know whether or not there is

1 substantial likelihood of success on the merits of that  
2 claim -- of those claims, and whether you will be  
3 irreparably harmed unless a preliminary injunction issues.  
4 All right? So that's what I want to talk about. I don't  
5 want to talk about any peripheral things. I want -- stick  
6 to that issue. All right?

7                   You know, I always have the -- well, criminal  
8 cases, we always have the -- the prosecutor always gets the  
9 last word. In the civil case, I'm going to turn it around a  
10 little bit, and I'm going to let the Plaintiff have the last  
11 word, so he can respond to you. I think it will be easier.

12                   MR. BAREFORD: Yes, ma'am.

13                   THE COURT: As he is not an attorney. All right?

14                   MR. BAREFORD: May it please the Court. Ma'am, we  
15 have previously filed objections to the report and  
16 recommendation. That's part of the record<sup>2</sup> for purposes of  
17 the legal argument, we stand on that brief.

18                   What I would like to do is in light of the  
19 evidence that we have heard -- that was presented today,  
20 explain the factual context for the --

21                   THE COURT: And before we go -- let me interrupt  
22 you. I'm sorry. But for Mr. DeFranco's benefit, the  
23 difference between this hearing and the TRO -- a TRO is an  
24 emergency and can be done without the other party there.  
25 Because if we don't do something fast, something serious is

1 going to happen. So we did that without the opportunity  
2 that they had today of presenting evidence. Because those  
3 are done in a little more biased way. In other words, the  
4 other side doesn't get the opportunity to prepare. They  
5 automatically lapse after 10 days.

6 Now, it's my understanding that you are still  
7 in a single cell, even though that has lapsed a month ago.  
8 But that order lapsed 10 days after it was signed<sup>2</sup> so we're  
9 here to put a -- whether or not a preliminary injunction  
10 similar to that issue, and a preliminary injunction then  
11 would last until the case is decided.

12 That's how -- those are the differences  
13 between those two. All right? I'm sorry.

14 MR. BAREFORD: Yes, ma'am. We have briefed the  
15 law -- I'm just getting slightly out of sequence into the  
16 matter of whether or not he can ultimately prevail on the  
17 merits. We have briefed procedural default, and the  
18 documentation this Court has included is in our objections  
19 to the Court recommendations.

20 So what I'd like to do now is just make  
21 reference to the facts of this particular situation to  
22 demonstrate how there can possibly be no irreparable injury<sup>2</sup>  
23 I say that because, frankly, the Plaintiff hasn't even  
24 gotten his story straight. And I don't mean that in a  
25 pejorative sense<sup>2</sup> I apologize. I don't mean that as a shot,

1 because that's not what I mean. However, what I do mean is  
2 that throughout this entire episode, he's attempting to have  
3 it both ways.

4           When it comes to actively courting an agent  
5 to support his efforts to obtain a Z code, he demonstrates  
6 his situation as one thing. When that -- when that is not  
7 the context, his behavior is something else. More  
8 specifically, as he even asserted here today, he confronted  
9 Dr. Lindemuth with the fact that on one hand, he's a violent  
10 offender, because he's been convicted of criminal homicide,  
11 and yet, on the other hand, he still asserts his innocence.

12           So when it comes to Dr. Lindemuth's  
13 consideration of whether or not he poses a threat to others  
14 because he's a violent offender, he wants her to give him  
15 credit for being a violent offender, but at the same time he  
16 continues to assert his innocence. So he's trying to have  
17 it both ways.

18           He pulls out this psychological report from  
19 20 years ago and, once again, presents that to  
20 Dr. Lindemuth. And, once again, for context of having her  
21 justify the recommendation for a Z code status for  
22 Mr. DeFranco, drives home the point that he is antisocial  
23 and demonstrates antisocial traits. So for that particular  
24 context, he's antisocial. But you have also heard he is a  
25 peer leader for a citizens group back on the pod. He also

1 works within the law library and helps other inmates with  
2 their legal files in generation or whatever. There, he is  
3 not antisocial. He is anything but that. He is a leader  
4 among peers, and he helps other.

5 He wants Dr. Lindemuth -- he wants to prove  
6 to her that he is taking Nitroglycerin for anxiety and chest  
7 pains, and yet when he actually goes to the physical with  
8 the medical doctors, he doesn't voice any complaints, any  
9 kind of problems with the chest pains. The last time he did  
10 that was in November of 2003. He has had three -- or two or  
11 three physicals since then; no voiced complaints. And yet  
12 he wants to make sure that she understands the fact that  
13 he's taking Nitroglycerin for anxiety. Why? Because he  
14 wants to emphasize those points that actually will help her  
15 give him a stronger recommendation for the Z code.

16 As a matter of fact, he confronts her with  
17 the question of I threatened a staff member; doesn't that  
18 seem like the kind of thing that is good for a Z code, for a  
19 candidate to go into a single cell? 2, yet, she didn't know  
20 that his own explanation, from what Miss Webb testified to,  
21 was that it was just joking around. There was nothing  
22 violent to it.

23 He wants the description of his behavior from  
24 that misconduct, to quote that he threatened another  
25 staff -- or threatened a staff member, to amplify the point

1 just with Dr. Lindemuth that he needs to have a single cell.  
2 And yet when he is actually facing the music at the  
3 misconduct hearing, he wants it to be cast in a completely  
4 different light; that there was no violence associated with  
5 it. It was -- he was joking around. He has got kind of a  
6 relationship with this corrections officer that was perhaps  
7 a little too familiar, more than anything else.

8               So when he wants to and he's able to identify  
9 basically a weapon in his efforts to obtain a single cell,  
10 he -- he relentlessly pursues it. He would do it with  
11 Miss Webb, but he certainly did it with Dr. Lindemuth.

12              However, Dr. Lindemuth's explanation for  
13 doing it is different than what his justification for having  
14 it is, even with what he presents to the Court.

15              You have heard Dr. Lindemuth testify that he  
16 is so persistent when it comes to seeking this  
17 recommendation for a Z code that she can't get to any other  
18 useful conversation with him<sup>2</sup> it's therapeutic for some of  
19 her patients to actually just have someone demonstrate  
20 something helpful, which is what she was talking about with  
21 the modality of therapy.

22              If they can see someone actually help them by  
23 agreeing and doing just a gesture, a helpful gesture of  
24 citing a recommendation to the Z code committee, then that  
25 will help them move past just the hangup that a patient may

1 have with respect to seeking it.

2 She wrote that recommendation solely -- and  
3 she testified to that -- solely because he was so persistent  
4 to get her to do that.

5 However, his physicals, he didn't have any  
6 problems, any recent problems discussing his anxiety or his  
7 chest pains. He certainly -- it took him the better part of  
8 10 months to make his way through one of the prescriptions  
9 of the Nitroglycerin, and from November to September, so  
10 it's not like he had a whole lot of panic attacks from that  
11 period.

12 The heart of this issue is whether or not Dr.  
13 Lindemuth's recommendation is a demonstration of the  
14 irreparable harm that he is attempting to present to this  
15 Court and prove to this Court in order to justify the single  
16 cell.

17 Now that we have got the full context of  
18 exactly what Dr. Lindemuth did and why she did it, her  
19 ability to explain it, it becomes very clear,  
20 Dr. Lindemuth -- there is being helpful to your patients and  
21 then there is being too helpful to your patients.

22 It should be fairly obvious that she was  
23 being too helpful, trying to extend basically a courtesy to  
24 one of her patients that has since become the basis of  
25 exactly why we are here today. That's not why she did that,

1     though. She didn't do that out of any medical necessity or  
2     anything like that. She did that simply because he hounded  
3     her to do it<sup>2</sup> then, of course, she agreed to do so.

4                 But like I said, he -- he has not  
5     demonstrated why he could possibly have an irreparable  
6     injury, because he -- like I said before, he can't even get  
7     his stories straight on exactly what his situation is. His  
8     situation in the context of having the conversations with  
9     Dr. Lindemuth are much more serious than they are with his  
10    behavior back on the pod. Therefore, a preliminary  
11    injunction is not necessary at this point, and his motion  
12    should be denied.

13                THE COURT: All right. Mr. DeFranco.

14                MR. DeFRANCO: Your Honor, first of all, I would  
15    like to point out that the Defendants have not -- I'm still  
16    begging to hear why my Z code was lifted to begin with.  
17    They have not presented why it was lifted. It was lifted,  
18    according to Mr. Barr's declaration -- this is before the  
19    Court -- approximately 44 days after I came out of the RHU  
20    for threatening to kill an officer.

21                Now, I was not put on Nitroglycerin or  
22    aspirin or Lopressor before this. I never had -- I never  
23    had that. I was put on afterwards.

24                I am in a cell with somebody, and I'm like  
25    this (indicating)<sup>2</sup> I'll tell you -- and my mom will tell



1 you. She is scared to death I am going to be transferred  
2 for filing this.

3 They took my Z code away because I made an  
4 error, and I threatened a staff member, and they took it  
5 serious enough to put me in RHU for 45 days. Then they take  
6 me out and put me in a new unit where the staff don't know  
7 me. Defendant Showers. And we have conversations, and he  
8 makes indirect threats about -- I was missing property, but  
9 that's a whole other issue. And they staffed me out of my Z  
10 code.

11 Now, according to Mr. Barr's declaration,  
12 which is appended to their objections, says that inmates are  
13 reviewed annually for a Z code. If they show significant  
14 progress, Mr. Barr -- that is his words -- Z code will be  
15 lifted. They have not shown one witness to show why my Z  
16 code was taken.

17 The Z code was taken because of my behavior  
18 towards a guard. It was retaliatory. They retaliated<sup>2</sup> it  
19 was held over my head. And it was felt even by my mother,  
20 who has a bad heart, and my whole family, that if you do  
21 something to a cellmate, you're going to -- across the  
22 state<sup>2</sup> then -- so it came to this: I had to tell my mother,  
23 mom, I'm filing a lawsuit, because if I do act out, and I  
24 hurt the cellmate, they are going to have a justified reason  
25 to transfer me<sup>2</sup> then comes this case.

1 THE COURT: And how long have you been in a double  
2 cell?

3 MR. DeFRANCO: I was in a double cell approximate  
4 from August 18th until November 2nd of this year. August  
5 18th, 2002. I went through 10 cellmates. One took  
6 self-lockup --

7 THE COURT: In two years.

8 MR. DeFRANCO: Yes.

9 THE COURT: Plus.

10 MR. DeFRANCO: Including -- included in my  
11 objections are -- are notarized -- or declarations from  
12 former cellmates that tell about my history. The counselor  
13 even admitted -- although she only said a couple -- didn't  
14 want me in the cell.

15 I'm not capable of living in a bathroom with  
16 another male or a female. I'm not -- it's just -- I'm not  
17 capable of doing that. I can't function that way. It's  
18 hurting my heart.

19 Nitroglycerin, they say, oh, Your Honor, nine  
20 months. Well, my mother had triple heart bypass, and she's  
21 gone through a bottle -- in maybe a year, hasn't even used a  
22 bottle. I have had my fourth bottle since 2003. The guards  
23 have it in their hand. Four bottles. That's along with  
24 my -- and that ain't for panic attacks. That's for my  
25 heart. I know the difference between the feelings now. I

1 didn't before. One is longer than the other.

2                   So I filed suit, and I did it at the risk of  
3 being transferred, with the threats of being transferred,  
4 but I did it because I can't live like that<sup>2</sup> if I blow up,  
5 get caught, I'm going to get in trouble, and they are going  
6 to have a reason to send me to SCI-Dallas.

7                   In addition to that, my heart -- my mom is  
8 really worried about my heart, as I am<sup>2</sup> you're right, Your  
9 Honor, I -- the medication they have me on, as far as with  
10 Nitroglycerin and the Lopressor and the aspirin, do help my  
11 heart. But I still -- I'm pumping this stuff into me that I  
12 didn't have to pump into me before. My Valium is  
13 60 milligrams a day. I don't take all 60 a day.

14                  THE COURT: You are still on the medication in the  
15 single cell, though.

16                  MR. DeFRANCO: Yes. So until -- as counsel  
17 pointed out, until June of 2003, which is nine months after  
18 they took -- after I got double-celled, my heart -- I  
19 started on Nitro pills. They gave me -- they forgot to tell  
20 you about the echocardiograms done on it that they performed  
21 at SCI-Albion<sup>2</sup> if you notice, Mr. Barr didn't take the  
22 stand. That's kind of -- I'm wondering why.

23                  MR. BAREFORD: Your Honor, this is -- not to take  
24 advantage of it, but just ask that he be reminded that  
25 because the Defendants don't have the burden in this case,

1 the Defendants don't necessarily need to produce witnesses  
2 to respond to his motion.

3 THE COURT: That is the law. But you're allowed  
4 to make that argument to me. It's not a criminal trial. He  
5 can make that argument. Go ahead.

6 MR. DeFRANCO: Well, I'm just curious why they  
7 didn't, after we put Miss Rebele on the stand, when he  
8 couldn't hear what she had to say<sup>2</sup> it's interesting that  
9 some of the witnesses, as you heard, were inconsistent with  
10 each other. Very much so. Miss Rebele can't tell you if we  
11 were sitting or standing, if she was going or coming, if she  
12 had the right number.

13 And what is very, very, very telling in the  
14 whole tale is Mr. Barr. What does he do? He calls out the  
15 doctor who wrote the recommendation that you granted a TRO  
16 on, and he tells her, we cannot have this, you can't write  
17 letters like this, this is setting up a dangerous precedent.  
18 Other inmates are going to do this. You can't do this<sup>2</sup> now  
19 we have a new affidavit that says somehow I manipulated it.  
20 If that's the case, people have been manipulating her for  
21 Oxycontin, the jail would be -- it doesn't make any sense.  
22 As you can see, she didn't want to say what she said about  
23 Mr. Barr. You had to tell her it was okay.

24 I think what Mr. Barr did is definitely  
25 wrong. He was tampering with a witness<sup>2</sup> ultimately got the

1 witness to sign an affidavit and come in here and give  
2 testimony that didn't make a lot of sense a lot of times, to  
3 me anyway, but she stuck by it. She told you -- the doctor  
4 told you that she stands by her report and recommendation.  
5 That due to my past, that I am antisocial, I can explode  
6 and -- my heart condition. That she stands by that report  
7 that she wrote<sup>2</sup> she's the doctor<sup>2</sup> while she signed an  
8 affidavit that was sort of watered down, like the original  
9 recommendation stated, she stood by. In her new affidavit,  
10 she still says she stands by him. I'm internalizing my  
11 anger with a cellmate, and it's causing me to take more  
12 Nitroglycerin. Which she looked at my chart on her own and  
13 came up with that conclusion. She didn't say any of that  
14 was false. She said that was true<sup>2</sup> I think based upon that  
15 testimony and the last part of the testimony in particular  
16 where she pointed out what actually transpired again between  
17 her and the Defendant -- well, Mr. Barr and an unknown  
18 female, got her to sign an affidavit. Although she stood by  
19 it, now she's saying that -- why would you do that? Why  
20 would you call in a doctor and tell her -- and dictate to a  
21 doctor what she can and can't do? You can't do that. You  
22 can't write them recommendations. She's only wrote four.  
23 If -- if what she said is true, it was only to appease me,  
24 her stamps -- her signature and her stamp is all over the  
25 report.

1 I think she went back on it a little bit  
2 because she was intimidated by the Defendants. But she  
3 still stood by it. She said it's all true, it's all  
4 accurate. Yeah, I'm going to point it out. She's the only  
5 one listening to me. She's my psychiatrist. Mr. Reilly,  
6 they don't want -- they don't call me down for psychotherapy  
7 and have one-on-one's. It's with her. Yes, that's a big  
8 deal to me.

9 I want to be a nice person, and at heart I am  
10 a nice person<sup>2</sup> I try to be nice. I just got -- I can't  
11 function living in a bathroom-sized space with another  
12 individual. It frustrates me, it's harmed me, it's hurting  
13 me<sup>2</sup> I can be nice outside of that<sup>2</sup> I try to be nice<sup>2</sup> I don't  
14 want to be mean. But being forced in that situation is  
15 hurting me. And I was single-celled for a reason. And if  
16 it was only for anxiety, as Miss Webb testified to, that the  
17 staffing committee thought was my only problem, then they  
18 were wrong. Because I have panic disorder, antisocial.  
19 That doesn't mean -- I don't know the real definition of  
20 antisocial.

21 I guess you pick and choose -- you can't  
22 associate yourself with anybody. I have to -- my job at the  
23 law library isn't to help all inmates with legal work. I  
24 manually do the inventory. I manually put all the new law  
25 books that come in -- the new ones go out [sic]. The PA Law

1 Reporters, the Fed. Supps, that's my job. But I do run a  
2 citizenship group, and I try to be a good person.

3 The problem with the whole thing is, is I was  
4 Z-coded for a reason, and they have failed to say why I was  
5 taken. Other than it was retaliatory. It happened 44 days,  
6 Your Honor, after I came out of RHU.

7 THE COURT: All right. All right. Now, you  
8 understand, some of the arguments both of you made today is  
9 information that will -- that bears on the ultimate decision  
10 in the case<sup>2</sup> for a preliminary injunction, I have to make a  
11 decision whether that extraordinary relief, which is giving  
12 you relief early on before its tried by the jury, is  
13 warranted. So it's an extraordinary relief<sup>2</sup> to do that, I  
14 have to go through the testimony today, and I have to  
15 determine whether, in fact, irreparable harm has been shown  
16 by you and, in fact, whether or not there is a substantial  
17 likelihood of success on the merits when we finally get to  
18 trial<sup>2</sup> I can't do that until I review everything, including  
19 some of the things that were referred to today, but not put  
20 into evidence itself; some of the affidavits and some of the  
21 arguments.

22 So I will take this under advisement, and I  
23 will rule as quickly as I can<sup>2</sup> I thank you all for your time  
24 and we're adjourned.

25 MR. BAREFORD: Thank you.

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(Hearing concluded at 4:30 p.m.)